SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 41

HENRY BROWN, ET AL., PETITIONERS,

vs.

LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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[fol. 1]

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

Filed September 13, 1964

HUGH S. PAUL
Deputy Clerk.

No. 47496

STATE OF LOUISIANA

versus

HENRY BROWN et al.

In Re Henry Brown et al.

Applying for writs of mandamus, certiorari and prohibition.

Robert F. Collins, Nils R. Douglas, Lolis E. Elie, Murphy W. Bell, Attorneys for Relator.

Richard Kilbourne, Attorney for Respondents.

[fol. 4]

IN THE SUPREME COURT OF LOUISIANA

Number .....

STATE OF LOUISIANA, Appellee

vs.

HENRY BROWN et al., Appellants

STATEMENT OF THE CASE

On March 7, 1964 at about 11:15 A.M., five young Negro males went into the Clinton Branch of the Audubon Regional

Library to check out some books. Henry Brown asked for a book and the assistant librarian, Mrs. Katie Reeves, checked the card catalogue, found out that the book was not there and told Henry Brown so. He was also told that the State Library would be asked for the book and that he would be notified when it came. Henry Brown then asked if he could see a copy of the Constitution of the United States, and he was told that there were no copies in the library. Mrs. Reeves, on the trial of this matter, testified that she assumed the defendants would leave when they were told the books they wanted were not available, but they didn't. She then asked them to leave and they refused. Mrs. Perkins, the Regional Librarian, was called, and she asked the defendants to leave, which they refused to do. No one said anything but Henry Brown. The defendants were not loud or noisy, nor were there any fights, crowds or angry words to cause the defendants to be asked to leave.

About this time, Sheriff Arch V. Doughty and a couple of deputies arrived at the library. He was told what had transpired and he asked the defendants to leave. They refused. Henry Brown told the sheriff that it was a public library and he wanted service there. The other four persons were asked if they too (Besides Brown) did not intend to leave, and they indicated that they didn't. The defendants [fol. 5] were then arrested and charged with violation of L.S.A.-R.S. 14:103.1.

They were tried on March 25, 1964 and found guilty. Henry Brown was sentenced to pay $150 and costs and in default of the fine to spend 90 days in the parish jail. The other four defendants were sentenced to pay $35 and costs and in default of the fine to spend 15 days in the parish jail.

[fol. 6]

IN THE SUPREME COURT OF LOUISIANA

Number .....

STATE OF LOUISIANA, Appellee

vs

HENRY BROWN et al., Appellants

APPLICATION FOR WRITS OF MANDAMUS, CERTIORARI, AND PROHIBITION AND INVOLVING THE GENERAL SUPERVISORY JURISDICTION OF THE HONORABLE SUPREME COURT OF THE STATE OF LOUISIANA OVER THE TWENTIETH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF EAST FELICIANA, STATE OF LOUISIANA, THE HONORABLE JOHN R. RARICK PRESIDING—Filed July 28, 1965

The petition of the State of Louisiana on the relation of Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie, defendants and appeliants here in, applying for writs of Mandamus, Certiorari, and Prohibition and invoking the general supervisory jurisdiction of the Honorable Supreme Court of the State of Louisiana over the Twentieth Judicial District Court of the Parish of East Feliciana with respect represents:

1. That the jurisdiction of the Honorable Supreme Court of the State of Louisiana is invoked under Article 7, Section 10 of the Constitution of the State of Louisiana and in accordance with rule 12 of the rules of the Supreme Court of the State of Louisiana.

2. That this is an unappealable case, the same being a misdemeanor in which the penalties imposed were:

a. Henry Brown $150 and costs, and in default of payment of the fine, 90 days in the parish jail.

b. Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie each to pay a fine of $35 and costs

and in default of the payment of the fine, 15 days in the parish jail.

[fol. 7] 3. That the appellants herein were charged in bill of information Number B-4420 with violation of L.S.A.-R.S. 14:103.1 relative to "Disturbing the Peace" as set forth in said bill of information a certified copy of which is attached hereto and made a part hereof as is copied in extenso.

4. That before entering on the trial of this matter, your defendants filed an application for a Bill of Particulars and that on March 25, 1964, the Court overruled and denied a portion of said application. That defendants timely objected and timely reserved a bill of exception making the application, the state's answer, and the ruling of the Court all a part of the bill of exception. Attached hereto and made a part hereof is the application for Bill of Particulars and the answer of the state thereto.

5. That before entering on the trial of this matter, your defendants filed a Motion to Quash and that on March 25, 1964, the Court overruled and denied the Motion to Quash. That defendants timely objected and timely reserved a bill of exception making the motion and the ruling of the Court all a part of the bill of exceptions. Attached hereto and made a part hereof is the Motion to Quash.

6. That during the trial of the matter herein, and during the examination of Miriam Feingold, a witness called by the state, an objection was made to a line of questioning as being irrelevant and immaterial. The Court overruled this objection and defendants timely objected and timely reserved a bill of exceptions making the questions, the objection and the ruling of the Court all a part of the bill of exceptions. This bill of exceptions Number 3 is attached hereto and made a part hereof.

7. That during the trial of the matter herein and also during the testimony of Miriam Feingold, a witness called by the state, an objection was made to a line of questioning on the grounds that a sufficient predicate had not been laid

[fol. 8] for the questions. The Court overruled this objection and defendants timely reserved a bill of exceptions making the questions, the objections and the ruling of the Court all a part of the bill of exceptions. This bill of exceptions Number 4 is attached hereto and made a part hereof.

8. That during the trial of the matter herein, and again during the testimony of Miriam Feingold, a witness called by the state, an objection was made to the relevancy of the questions. The objection was overruled and defendants timely reserved a bill of exceptions making the questions, the objection and the ruling of the Court all a part of the bill of exceptions. This bill of exceptions Number 5 is attached hereto and made a part hereof.

9. That during the trial of the matter herein and during the cross examination of Mrs. Marshall Perkins, a witness called by the State, she was asked a question which was objected to by the state. The Court sustained the state's objection and a timely bill of exceptions was reserved making the question, the objection of the state and the ruling of the Court all a part of the bill of exceptions. This bill of exceptions Number 6 is attached hereto and made a part hereof.

10. That during the trial of the matter herein and during the cross examination of Mrs. Marshall Perkins, a witness called by the state, she was asked a question to which the state objected. The Court sustained the state's objection and defendants timely excepted making the question, the objection of the state and the ruling of the Court all a part of the bill of exceptions. This bill of exceptions Number 7 is attached hereto and made a part hereof.

11. That during the trial of the matter herein and during the cross examination of Sheriff Arch V. Doughty, a witness called by the state, he was asked a question to which the [fol. 9] state objected. The Court sustained the state's objection and defendants timely excepted making the question, the objection and the ruling of the Court all a part of the

bill of exceptions. This bill of exceptions Number 8 is attached hereto and made a part hereof.

12. That at the conclusion of the trial of this matter, defendants were all found guilty. On a subsequent day of Court and before judgment was entered on said verdict and before any sentence had been imposed, defendants filed a motion for a new trial. The Court overruled the Motion For A New Trial and defendants timely excepted making the motion, the ruling of the Court and the entire record all a part of the bill of exceptions. This bill Number 9 is attached hereto and made a part hereof.

13. That defendants have exhausted all of their remedies in the Court of original jurisdiction, no appeal lies from the conviction and sentence imposed, hence relief is requested of this Honorable Court.

Wherefore, appellants pray that this application for Writs of Mandamus, Certiorari, and Prohibition be granted and for all orders necessary and for general and equitable relief.

Robert F. Collins, Nils R. Douglas, Lolis E. Elie,
2211 Dryades Street, New Orleans, Louisiana, By:
.....;
Murphy W. Bell, 971 South 13th Street, Baton Rouge, Louisiana.

[fol. 10]
State of Louisiana
Parish of Orleans

Before Me, the undersigned authority, personally came and appeared: Nils R. Douglas, who after first being by me duly sworn did depose and say that he is one of the attorneys for appellants herein, that he prepared the above petition and all the allegations therein contained are true and correct to the best of his knowledge, information and belief; that type written notice of intent to apply for writs of Prohibition, Mandamus and Certiorari was filed in open Court on the 28th day of July, 1964, and that copy of the

foregoing petition has been served on the Judge and District Attorney by mail, postage prepaid at the Twentieth Judicial District Court, Clinton, Louisiana.

Nils R. Douglas

Sworn to and subscribed before me this day of , 1964.

.....

Notary Public

[fol. 11]

ATTACHMENT TO APPLICATION

Bill of Information

STATE OF LOUISIANA

TWENTIETH JUDICIAL DISTRICT

PARISH OF EAST FELICIANA

Richard Kilbourne, District Attorney of the Twentieth Judicial District of the State of Louisiana who, in the name and by the authority of the State prosecutes in this behalf, now comes into the Twentieth Judicial District Court, in and for the Parish of East Feliciana, in said State, on this the 11th day of March in the year of our Lord, One Thousand Nine Hundred and sixty-four, and with leave of the Court first had and obtained, gives said Court here to understand and be informed that one Henry Brown, one Willie Kelly, one L. J. Bibbins, one Robert Smith and one Cleveland McKinzie, late of the Parish of East Feliciana, within the body of the Parish of East Feliciana on or about the 7th day of March in the year of Our Lord, One Thousand Nine Hundred and sixty-four, violated R.S. 14:103.1, relative to disturbing the peace, in that, with the intent to provoke a breach of the peace and under circumstances such that a breach of the peace might be occasioned thereby, they congregated together in the Audubon Library building in the

Town of Clinton, Louisiana and did then and there fail to and refuse to leave said premises when ordered to do so by Mrs. Marcia Perkins, who was then and there in lawful charge of said premises and did further refuse and fail to leave said premises when ordered to do so by Arch V. Doughty, Sheriff of the Parish of East Feliciana, contrary to the form of the Statutes of the State of Louisiana in such cases made and provided against the peace and dignity of the same.

District Attorney of the Twentieth Judicial District of the State of Louisiana.

[fol. 12]

ATTACHMENT TO APPLICATION

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND MCKINZIE

BILL OF EXCEPTION NUMBER 1

BE IT REMEMBERED that before entering on the trial of this case your defendants, having heard the bill of information read and protesting that they were not guilty of the offense set out therein filed the following application for a bill of particulars:

Now into Court, through undersigned counsel, come Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and

Cleveland McKinzie, made defendants in the above numbered and entitled matter and protesting that they are not guilty of the crimes charged, plead that they are unable to properly defend themselves until they are furnished a Bill of Particulars upon the following, to-wit:

1. Where were the defendants arrested?

2. Who arrested the defendants?

3. At what time were the defendants arrested?

4. Who ordered the arrest of the defendants?

5. Who else was present when the defendants were arrested?

6. Does the State contend that the mere presence of the defendants in the Audubon Library building violated L.S.A.-R.S. 14:103.1?

7. Does the state contend that the public is not generally invited to use the facilities and resources of the Audubon Library building in the Town of Clinton?

WHEREFORE, the applicants pray that the State of Louisiana through the District Attorney, Parish of East Feliciana be ordered to show cause on a day and at a time certain why the said Bill of Particulars, as requested above, should not be furnished and served upon your applicants, defendants herein, and all other relief as they may be entitled.

Of Counsel:

CARL RACHLIN
280 Broadway
New York, New York

FLOYD B. MCKISSICK
213½ W. Main Street
Durham, North Carolina

By Attorneys:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans, Louisiana

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

By: .....
MURPHY W. BELL

[fol. 13]

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally appeared:

MURPHY W. BELL

one of the attorneys for the accused in the above entitled and numbered cause, who, after being duly sworn did depose and say that he has read and prepared the foregoing application; that all of the allegations of fact are true and correct, and that this application was not filed for purposes of delay.

.....
MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS DAY OF MARCH, 1964.

.....
Notary Public

ORDER

Considering the foregoing, IT IS ORDERED that District Attorney Richard Kilbourne show cause on the ..... day of ....., 1964, at ..... o'clock .....M., why the foregoing application for Bill of Particulars should not be granted as prayed for.

CLINTON, LOUISIANA, ..., 1964.

.....
Judge

That on March 25, 1964 a hearing was had contradictorily with the State on the said Application for Bill of Particulars.

That on March 25, 1964 the court overruled and denied a portion of the said Application for Bill of Particulars to

which your defendants then and there objected and reserved a bill of exceptions making a part of the bill of exceptions the application for the Bill of Particulars, the answer of the District Attorney and the ruling of the court all a part of the formal bill.

[fol. 14] That defendants first submitting this his formal bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the statute in such case made and provided which is done accordingly this 7th day of October, 1964.

/s/ JOHN R. RARICK
Judge

[fol. 15]

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

HENRY BROWN, WILLIE KELLY, ET AL.

PER CURIAM TO BILL OF EXCEPTIONS NUMBER 1

The State voluntarily answered numbers 1 through 5 of defendants' application for a bill of particulars but refused number 6 and 7 on the grounds the information was irrelevant.

The Court after listening to the argument felt that the information was explicit in setting forth the offense charged, the language of the statute was tracked and the defendants were adequately informed of the state's contention against

them. Thus the reason for the overruling the application for a bill of particulars as to questions 6 and 7.

Clinton, Louisiana this 7th day of October, 1964.

John R. Rarick, Judge.

Duly sworn to by Nils R. Douglas, jurat omitted in printing.

[fol. 16]

ATTACHMENT TO APPLICATION

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND McKINZIE

BILL OF EXCEPTION NUMBER 2

BE IT REMEMBERED that before entering on the trial of this case your defendants, having heard the bill of information read and protesting that they were not guilty of the offense set out therein filed the following Motion to Quash:

Now Into Court, through undersigned counsel comes, Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie reserving their rights to file other necessary pleadings herein, having been informed that they have been charged in a Bill of Information in the above and entitled cause, for the crime of "Disturbing the peace," and protesting that they are not guilty of the offense set out in the Bill of Information in its entirety, for the reason that Movers have been and will be deprived of the due

process of law as guaranteed by Article I, section 2, 10 and 11 of the Constitution of Louisiana and the Fourteenth Amendment of the Constitution of the United States as follows:

1. That the Bill of Information on which defendants have been charged does not inform the defendants of which, if any, crimes they have committed under the laws of the State of Louisiana.

2. That in the alternative, if this Court finds that the defendants have been properly informed of the acts they are accused of committing, then only in the alternative the defendants aver that LSA R.S. 14:103.1 is unconstitutional on its face, in that it is vague in not setting forth specific criminal conduct with the requisite intent required by the law of the State of Louisiana, and more specifically, your movers are being deprived of their rights under Article 1, sections 2, 10 and 11 of the Constitution of the State of Louisiana, as well as those under the Fourteenth Amendment to the United States Constitution, because this law is unconstitutional.

3. That the statute on which the prosecution is based and the Bill of Information founded thereon, fail to charge a punishable offense for want of allegation of active criminal intent and/or specific intent.

[fol. 17] 4. That the Bill of Information and the prosecution ensued thereon, are unconstitutional, because they violate the First and Fourteenth Amendments of the Constitution of the United States by depriving defendants of freedom of Assembly and equal protection of the laws.

5. That the Bill of Information and the Statute cited thereon are defective and struck with constitutional disabilities because they purport to unlawfully delegate powers inherently legislative to officers of the executive and/or to the owners of premises or to the public at large; such unlawful delegation of unlimited discretion over the public and your movers being without ascertainable standards, limits, or scope, all of which deprive your movers of their rights

under the State and Federal Constitutions, the laws of the United States and of the State of Louisiana and particularly those granted them under Articles I, V and XIV of the Federal Constitution, without due process of law.

WHEREFORE, the said defendants, Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie pray that this Motion to Quash be maintained, and that the said information be declared null and void, and that they be discharged therefrom.

That on March 25, 1964 a hearing was had contradictorily with the State on the said Motion to Quash.

That on March 25, 1964 the Court denied the Motion to Quash to which denial your defendants then and there objected and reserved a bill of exceptions making a part of the Bill of Exceptions the Motion to Quash and the court's ruling thereon.

That defendants first submitting this his formal bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this 7th day of October, 1964.

/s/ JOHN R. RARICK
Judge

[fol. 18]

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

HENRY BROWN, WILLIE KELLY, ET AL.

PER CURIAM TO BILL OF EXCEPTIONS NUMBER 2

By motion to quash, defendants set forth numerous and sundry grounds attacking this statute. No evidence was offered on the motion and at the hearing, T-2, the defendants abandoned all but one attack, stating:

> "The question and only question before this Court, is whether or not Negroes going to a public library in the absence of loud and boisterous conduct, can be construed as a crime. This is the only issue before the Court . . . (T-12)"

Obviously defendants presupposed evidence not in the record or before the court in considering the merits of their argument. Before the Court was simply a misdemeanor information charging breach of the peace by intentionally congregating in the Audubon Library and refusing to leave when requested to do so by person in charge and later by the sheriff. No race relations case was made in the information. The legal presumption favors the constitutionality of our laws.

Howbeit for argument, an act legal under normal circumstances can be performed at places and times, intentionally, so as to justify behavior criminal in nature. A library open to the public, must have someone in charge

for order and maintenance. There must be hours and rules established. To legally hold that the librarian in charge has no authority to request those who have utilized the services to move on, could be tantamount to ordering a library to remain open 24 hours a day and 7 days a week.

Clearly the information smacks of an intentional act to repudiate the authority of the librarian in charge for the purpose of breaching the peace. Nothing more—nothing less.

Thus the ruling of this Court.

John R. Rarick, Judge.

Duly sworn to by Nils R. Douglas, jurat omitted in printing.

[fol. 19]

ATTACHMENT TO APPLICATION

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND McKINZIE

BILL OF EXCEPTION NUMBER 3

BE IT REMEMBERED that on the trial of this case the State called as its witness Miriam Feingold and the following took place:

Ques. State your name for the record, and spell it please?
Ans. Miriam Feingold.

Ques. What is your residence?
Ans. Clinton, Louisiana.
Ques. How long have you been a resident of Clinton?
Ans. Since August of 1963.
Ques. What was your residence before that?
Ans. New York City.
Ques. Your address.
Ans. 64 Sterling Street, Brooklyn, New York.
Ques. Under what circumstances did you come to Clinton, Louisiana?
Ans. I came as a task-force.

By Mr. Bell. If it would please the court, I would like to interpose an objection here that it is irrelevant and immaterial and has nothing to do with this particular case what circumstances she came here under. I think that the question here is whether or not these five defendants were guilty of disturbing the peace by entering the Audubon Library, and I think that's irrelevant and immaterial to the issue in this case.

By the Court. What is your offering to prove?

By Mr. Kilbourne. If your Honor please, I am merely laying a foundation for further examination of the witness. I don't think I should be required to ask my questions in any particular order.

By the Court. The Court overrules the objection, proceed.

Defendants now perfect the above recited bill of exception making the question, the objection by the defense and the ruling of the court all a part of the formal bill of exception and first submitting this bill of exception to the District [fol. 20] Attorney now tenders the same to the court and prays that the same be signed and sealed by the Judge of this court pursuant to the statute in such case made and provided which is done accordingly this 7th day of October, 1964.

/s/ JOHN R. RARICK
Judge

[fol. 21]

ATTACHMENT TO APPLICATION

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND MCKINZIE

BILL OF EXCEPTION NUMBER 4

BE IT REMEMBERED that on the trial of this case the State called as its witness Miriam Feingold and the following took place:

Ques: Do you know when and by whom the visit of these five defendants to the Audubon Library was planned?

By Mr. Elie: Objection, there is no testimony to show that it was planned. Your Honor, no sufficient predicate has been laid for this question.

By the Court: Will the District Attorney lay a little more foundation?

Ques: Do you know whether or not this visit to the Audubon Library by these five defendants was planned in advance?

Ans: Would you please specify what you mean by "planned in advance."

Ques: Yes, I will try to be a little more specific on that. I will put it this way: Was that one of the proj-

ects of the Congress of Racial Equality in this community, to have these men or other Negroes go to the Audubon Library?

By Mr. Bell: Your Honor, of course, I have objected to that on the grounds that I think that is irrelevant and immaterial. I think these people are charged with disturbing the peace under 14:103.1, and it's no charge of criminal conspiracy here at all; in the presence of a plan that would indicate a conspiracy. That's what I think the District Attorney is getting at now, he is attempting to prove a conspiracy, alleged, neither has it been charged, just a blanket indictment for disturbing the peace. I think if the witness would answer a question like that, it certainly would indicate that she is testifying to a conspiracy, and that would involve a lot of other people besides these defendants.

By the Court: Do you want to be heard on it?

By Mr. Kilbourne: Yes. Your Honor, I believe I alleged [fol. 22] that they went there with the intent to provoke a disturbance of the peace, that's all I am getting at. Of course, every crime that has more than one defendant involves also the crime of conspiracy. That doesn't necessarily mean that they have to be charged, I will certainly admit that. I think the State is obliged to try to prove what the intent was to which these defendants went to the Library.

By the Court: The Court will overrule the objection.

By Mr. Bell: I would like to reserve a Bill of Exceptions, Your Honor, making the question, the objection and the argument of counsel all a part of the formal bill of exceptions.

Defendants now perfect the above recited bill of exception making the question, the objection, and the argument of counsel all a part of the formal Bill of exceptions and

first submitting this his bill of exception to the District Attorney now tenders the same to the court and prays that the same be signed and sealed by the judge of this court pursuant to the statute in such case made and provided which is done accordingly this 7th day of October, 1964.

/s/ JOHN R. RARICK
Judge

[fol. 23]

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

HENRY BROWN, WILLIE KELLY, ET AL.

PER CURIAM TO BILL OF EXCEPTIONS NUMBERS 3 & 4

Defendants had objected to questioning by the State of a State's witness on the grounds of irrelevancy and immateriality. The reply by the State was that it was offering the evidence as foundation for further examination. Intent was a material ingredient of the crime charged, the objections were overruled.

Clinton, Louisiana this 7th day of October, 1964.

John R. Rarick, Judge.

Duly sworn to by Nils R. Douglas, jurat omitted in printing.

[fol. 24]

ATTACHMENT TO APPLICATION

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND McKINZIE

BILL OF EXCEPTION NUMBER 5

BE IT REMEMBERED THAT on the trial of this case the State called as its witness Miriam Feingold and the following took place:

Ques: Were there other attempts to enter other branches of the Audubon Library on the same date as this attempt to enter the Audubon Branch Library?

By Mr. Bell: Your Honor, I hate to keep objecting, but the Bill of Information reads that "on the 7th day of March, 1964, these named defendants, with the intent to provoke a breach of the peace, and under circumstances such a breach of the peace might be occasioned, thereby congregated together in the Audubon Library Building in the Town of Clinton, Louisiana, and did then and there fail and refuse to leave said premises when ordered to do so by Mrs. Marshall Perkins, who then and there in lawful charge of the said premises; and then and there further failed and refused to leave when ordered to do so by Sheriff Doughty." It appears

to me that that's all we have to do—I am not trying to dictate to the State how to prove their case, but we haven't gotten on any of this evidence yet. We are talking about integrating other libraries and other places, and we haven't gotten on the points of this case. I submit that anything else other than proving that the persons here occasioned a breach of the peace over here in the Town of Clinton—that's relevant and material. It might have some vague connection, and it might show a conspiracy, but no conspiracy has been charged, and that's all we are on now, conspiracy.

By Mr. Kilbourne: Your Honor, we still get back to the question of the intent with which the defendants went into the library. If they were in concert with [fol. 25] others—I haven't mentioned the word "integrate", but I see that counsel has, so we will talk about whether they specifically intended to integrate the library. If the evidence will show that that was a concerted action by these defendants, and it may very well be a conspiracy, but that's up to me whether I want to charge them with that or not. I could have already charged them; but what I am getting at is this, if the evidence will show that these defendants and others with them acted in concert to what they say, "integrate the library," then we are getting down to the question of intent, because when you start talking about integrating something, you can easily be talking about provoking a disturbance of the peace, and it is common knowledge that that's what it has done all over the United States.

By Mr. Bell: I wasn't aware that I had used the word "integrate," but if I have, I certainly wouldn't mind if the State would concede that the library is segregated, then it would cut some of the crust away from this thing and really get to the issue

of the case. If we want to make that concession and concede that the Audubon Regional Library is segregated according to race, that Negroes are excluded, then we might be able to really get down and see what the situation really is.

By Mr. Kilbourne: Your Honor, I realize that we haven't started getting to the facts of the case, and it looks like we might be a long time doing it, but I am going to have to try to persist in doing it to show the intent.

By the Court: The Court will overrule the objection.

By Mr. Bell: To which ruling of the Court we respectfully except, and ask that a formal Bill be reserved, making the questions, and the answer and argument of counsel to be a part of the formal Bill.

Defendants now perfect the above recited bill of exception making the question, the answer and argument of counsel all a part of the formal bill of exceptions and first submitting this his bill of exception to the District Attorney now tenders the same to the court and prays that the same be signed and sealed by the Judge of this court pursuant to the statute in such case made and provided which is done accordingly this 7th day of October, 1964.

/s/ JOHN R. RARICK
Judge

[fol. 26]

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

HENRY BROWN, WILLIE KELLY, ET AL.

PER CURIAM TO BILL OF EXCEPTIONS NUMBER 5

This bill was reserved on the Court's overruling defendants objection to the District Attorney's question; "there were other attempts to enter other branches of the Audubon Library on the same date . . . "

Intent being a necessary showing by the state, other instances of criminal intent to establish a design or pattern of acts is admissible. Thus the basis for the Court's ruling.

Clinton, Louisiana this 7th day of October, 1964.

John R. Rarick, Judge.

Duly sworn to by Nils R. Douglas, jurat omitted in printing.

[fol. 27]

ATTACHMENT TO APPLICATION

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND MCKINZIE

BILL OF EXCEPTION NUMBER 6

BE IT REMEMBERED that on April 9, 1964 the date to which the trial had been continued, and during the trial of this matter the State called Mrs. Marshall Perkins the Regional Librarian of The Audubon Regional Library and the following took place upon cross examination by Mr. Collins:

Ques. In other words, it's your testimony that there were no racial restrictions, there were none at that time, and there are none now, with reference to the use of any of the facilities of the Audubon Regional Library, is that a fact?

By Mr. Kilbourne: I object to that, Your Honor.

By the Court: Sustain the objection.

By Mr. Collins: Your Honor, counsel for the defendants respectfully reserves a bill of exceptions, making the testimony of the witness and the question part of the record. I don't think that we can get to the heart of the question.

By the Court: I don't understand what you mean by "heart" of it, but we are not trying a race-case, we are try-a Disturbing the Peace case, a simple misdemeanor case. Let's not belabor it any more, let's get ahead with the case at hand.

Defendants now perfect the above recited bill of exception making the testimony of the witness and the question a part of the bill of exceptions and first submitting this his bill of exception to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this 7th day of October, 1964.

/s/ JOHN R. RARICK
Judge

[fol. 28]

ATTACHMENT TO APPLICATION

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND MCKINZIE

BILL OF EXCEPTION NUMBER 7

BE IT REMEMBERED that on April 9, 1964 the date to which the trial had been continued, and during the trial of this matter the State called Mrs. Marshall Perkins the Regional

Librarian of the Audubon Regional Library and the following took place on cross examination by Mr. Collins:

Ques: Isn't it a fact, Mrs. Perkins, that the Blue Bookmobile was the one that was designated to be used by Negroes only?

By Mr. Kilbourne: I object your Honor, it's irrelevant.

By the Court: Sustain the objection.

By Mr. Collins: To which ruling of the court, counsel for the defendants respectfully reserve a Bill of exceptions making the question and the record a part thereof.

Defendants now perfect the above recited bill of exception making the testimony of the witness and the question a part of the bill of exceptions and first submitting this his bill of exception to the District Attorney now tenders the same to the court and prays that the same be signed and sealed by the Judge of this Court pursuant to the statute in such case made and provided which is done accordingly this 7th day of October, 1964.

/s/ JOHN R. RARICK
Judge

[fol. 29]

ATTACHMENT TO APPLICATION

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND MCKINZIE

BILL OF EXCEPTION NUMBER 8

BE IT REMEMBERED that on April 9, 1964 the date to which the trial had been continued, and during the trial of this matter the State called Sheriff Arch V. Doughty and the following took place on cross examination:

Ques: And as Sheriff of this Parish, you would be in a position to know that it has been customary for the Parish to maintain segregation of the races?

By Mr. Kilbourne: I object, your honor.

By the Court: I sustain the objection.

By Mr. Bell: To which ruling we except and ask that a formal Bill of exceptions be reserved, making the question and the answer, and the ruling of the court all a part of the formal bill.

Defendants now perfect the above recited bill of exception making the question, and the answer and the ruling of the court all a part of the formal bill and first submitting this his bill of exception to the District Attorney now tenders

the same to the court and prays that the same be signed and sealed by the Judge of this court pursuant to the statute in such case made and provided which is done accordingly this 7th day of October, 1964.

/s/ John R. Rarick
Judge

[fol. 30] No. B-4420

20th Judicial District Court

Parish of East Feliciana

State of Louisiana

State of Louisiana

vs.

Henry Brown, Willie Kelly, et al.

Per Curiam to Bill of Exceptions Numbers 6, 7 & 8

Bill numbered 6, 7, & 8 were taken to the Court's adverse ruling, upon the State's objection, to the defendants' questions on cross examination such as "racial restrictions", "Negro use", and "maintenance of segregation".

The obvious intent of the defense throughout the trial was to inject into the record inflammatory and irrelevant evidence of a race nature to cloud up the issues of the case. The record is clear that this was no integration case. These men went into the library, they were served and waited on. The criminal charge rests or falls on their intentional acts in refusing to obey the orders of the librarian to leave after they had been served. The evidence sought offered nothing of a probative value on guilt or innocence. Thus the ruling.

Clinton, Louisiana this 7th day of October, 1964.

John R. Rarick, Judge.

Duly sworn to by Nils R. Douglas, jurat omitted in printing.

[fol. 31]

ATTACHMENT TO APPLICATION

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND MCKINZIE

BILL OF EXCEPTION NUMBER 9

BE IT REMEMBERED that at the conclusion of the trial of this case, the defendants were found guilty as charged. On a subsequent day of court before any judgment was entered on said verdict, and before any sentence had been imposed, defendants through counsel filed the following Motion for a New Trial.

Now Into Court, through undersigned counsel comes, Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie, defendants in the above entitled and numbered cause and now move the court to set aside the judgment rendered in this cause and grant a new trial, for the following reason: (Defendants herein especially reserving the right to enlarge and more particularly articulate the herein motion after receipt of transcript from the court reporter, Mrs. Erma Parden).

1. There is no evidence in the record to support the judgment, WHEREFORE, movers pray that this motion be granted and a new trial be ordered in these proceedings.

Subsequently, a hearing was had on the Motion for a New Trial after which hearing the Motion was denied and counsel for defendant timely excepted to the ruling of the court, making the Motion for a New Trial and the ruling of the Court all a part of the Bill of Exceptions. Your defendants now perfect this their bill of exception making a part of same the Motion for a New Trial, and the entire record and the ruling of the Court all a part of the Bill of Exceptions and first submitting this his bill of exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 7th day of October, 1964.

/s/ JOHN R. RARICK
Judge

[fol. 32]

No. B-4420

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

vs.

HENRY BROWN, WILLIE KELLY, ET AL.

PER CURIAM TO BILL OF EXCEPTIONS NUMBER 9

A motion for new trial was submitted to the Court. At the time of its submission the sole basis for the motion was limited to the allegation "no evidence in the record to support the judgment."

The motion failing to set forth any specific errors or grounds for suggestion of error, nothing was submitted to

the Court for a reconsideration of the case. Thus the basis for the ruling.

Clinton, Louisiana this 7th day of October, 1964.

John R. Rarick, Judge.

Duly sworn to by Nils R. Douglas, jurat omitted in printing.

[fol. 33]

IN THE SUPREME COURT OF LOUISIANA

New Orleans, 70112

October 26, 1964

No. 47,496

STATE OF LOUISIANA

v.

HENRY BROWN et al.

In re: Henry Brown et al. applying for writs of mandamus, certiorari and prohibition.

ORDER DENYING APPLICATION FOR WRITS OF MANDAMUS, CERTIORARI AND PROHIBITION—October 26, 1964

The application is denied. We find no error in any of the rulings and judgment complained of.

JBF, JBH, FWH, EHMcC, WBH, JWS, FWS.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 34]

IN THE SUPREME COURT OF LOUISIANA

No. 47,496

STATE OF LOUISIANA

vs.

HENRY BROWN et al.

PETITION FOR STAY OF EXECUTION OF SENTENCE AND ORDER GRANTING SAME—Filed October 28, 1964

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie, defendants in the above numbered and entitled cause, with respect represents:

1. That the decree of this Honorable Court rendered October 26, 1964, refusing their Application for Writs of Mandamus, Certiorari and Prohibition and, thus affirming the verdict and sentence of the Twentieth Judicial District Court of Louisiana is final, there being no right of rehearing therefrom.

2. Petitioners aver that the opinion and decree of this Honorable Court deprives them of their rights guaranteed under the First and Fourteenth Amendments to the Constitution of the United States, depriving them of freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws and also deprives them of rights granted by the Sixth Amendment of the Constitution of the United States and of rights guaranteed by Section 9 Article One of the Louisiana Constitution, which rights are guaranteed all citizens of the State of Louisiana and the United States.

[fol. 35] 3. Petitioners aver that the following errors were made in the trial of the charges against them:

(1) The court's action in denying questions 6 and 7 of the application for a bill of particulars. Among the questions asked in the Application For A Bill Of Particulars were:

6. Does the State contend that the mere presence of the defendants in the Audubon Library building violated L.S.A.-R.S. 14:103.1?

7. Does the State contend that the public is not generally invited to use the facilities and resources of the Audubon Library building in the Town of Clinton?

This is included in bill of exception number one.

(2) The court's action in denying defendants Motion to Quash. In the Motion to Quash defendants set out rights protected under the first and fourteenth amendments free speech, and assembly and denials of fourteenth amendment due process and equal protection rights. Petitioner does not waive any of the other allegations made in the Motion to Quash. This is included in bill of exception number two.

(3) The court's action in denying bills of exceptions numbered 3, 4 and 5 by which defendants objected to a fishing expedition and series of wholly irrelevant questions of one of the state's witnesses.

(4) The court's action in denying a question proffered by the defense to a witness for the state which question was:

"In other words, it's your testimony that there were no racial restrictions, there were none at that time, and there are none now, with reference to the use of any of the facilities of

the Audubon Regional Library, is that a fact?"

This is included in bill of exception number 6.

[fol. 36] (5) The court's denial of the following question:

"Isn't it a fact, Mrs. Perkins, that the Blue Bookmobile was the one that was designated to be used by Negroes only?"

This is included in bill of exception number 7.

(6) The court's denial of the following question:

"And as sheriff of this parish, you would be in a position to know that it has been customary for the parish to maintain segregation of the races?"

This is included in bill of exception number 9.

Timely bills of exceptions were reserved to all the above errors.

4. Petitioners aver that they are desirous of applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal, to review the decision of the Honorable Court upon the issues shown by the record in this case; and that petitioners desire that they be given a stay in the execution of their sentences in which to apply to said court; and that the decree or mandate of this Honorable Court be stayed so that petitioners will have an opportunity to so present their application to the Supreme Court of the United States for relief.

Wherefore, petitioners pray that after due consideration that this Honorable Court grant them a reasonable stay of execution and that they be permitted delay of 90 days in which to prepare and file in the Supreme Court of the United States their application for a Writ of Certiorari or appeal to review the decision of this Honorable Court and that the mandate and decree of this Honorable Court be

withheld accordingly and for all general and equitable relief.

Robert F. Collins, Nils R. Douglas, Lolis E. Elie,
2211 Dryades Street, New Orleans, Louisiana,
By: .....;
Murphy W. Bell, 971 South 13th Street, Baton Rouge, Louisiana.

Of Counsel: Carl Rachlin, 280 Broadway, New York, New York; Floyd B. McKissick, 213½ W. Main Street, Durham, North Carolina.

[fol. 37] ORDER

Let petitioners be granted a stay of execution of the decree of this Honorable Court for a period of 30 days.

Jno. B. Fournet, Chief Justice.

New Orleans, Louisiana, November 4th, 1964.

CERTIFICATE

I certify that a copy of this petition has been mailed to opposing counsel.

Nils R. Douglas

The foregoing stay of execution is hereby extended for an additional thirty days, i.e., until January 4th, 1965.

Jno. B. Fournet, Chief Justice.

11/25/64

[File endorsement omitted]

[fol. 38]

IN THE SUPREME COURT OF LOUISIANA

No. 47,496

STATE OF LOUISIANA

VS.

HENRY BROWN et al.

PETITION FOR STAY OF EXECUTION OF SENTENCE AND ORDER GRANTING SAME AND, IN THE ALTERNATIVE, AN APPLICATION FOR HABEAS CORPUS, AND, IN THE ALTERNATIVE, APPLICATION FOR A WRIT OF MANDAMUS—Filed November 4, 1964

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie, defendants in the above numbered and entitled cause, with respect represents:

I. Petition for Stay of Execution of Sentence

1. That the decree of this Honorable Court rendered October 26, 1964, refusing their Application for Writs of Mandamus, Certiorari and Prohibition and, thus affirming the verdict and sentence of the Twentieth Judicial District Court of Louisiana is final, there being no right of rehearing therefrom.

2. Petitioners aver that the opinion and decree of this Honorable Court deprive them of their rights guaranteed under the First and Fourteenth Amendments to the Constitution of the United States, depriving them of freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws and also deprive them of rights granted by the Sixth Amendment of the Constitution of the United

States and of rights guaranteed by Section 9 Article [fol. 39] One of the Louisiana Constitution, which rights are guaranteed all citizens of the State of Louisiana and the United States.

3. That there is presently pending before this Court in this matter a petition for Stay of Execution of Sentence which was filed on October 28, 1964, and has not yet been acted upon to petitioners' knowledge.

4. Petitioners have been informed that while formerly this Honorable Court granted Stays in the execution of sentences: that no longer is this the case where certiorari is denied and it is now the duty of the trial court to act upon said petition.

5. That following the new procedure, Application for Stay of Execution was made to and denied by John R. Rarick, Judge of the Twentieth Judicial District Court, on November 2, 1964.

6. The petition denying the Stay of Execution is attached hereto and made a part hereof.

7. That petitioners are entitled of right to a stay in the execution of their sentences to apply to the Supreme Court of the United States for a review of their cases.

8. Petitioners aver that the following errors were made in the trial of the charges against them:

   A. The court's action in denying questions 6 and 7 of the application for a bill of particulars. Among the questions asked in the application for a bill of particulars were:

      6. Does the State contend that the mere presence of the defendants in the Audubon Library building violated L.S.A.-R.S. 14:103.1?

      7. Does the State contend that the public is not generally invited to use the facilities and resources of the Audubon Library building in the Town of Clinton?

This is included in bill of exception number one.

[fol. 40] B. The court's action in denying defendants' Motion to Quash. In the Motion to Quash defendants set out rights protected under the First and Fourteenth Amendments free speech, and assembly and denials of Fourteenth Amendment due process and equal protection rights. Petitioner does not waive any of the other allegations made in the Motion to Quash. This is included in bill of exception number two.

C. The court's action in denying bills of exceptions numbered 3, 4 and 5 by which defendants objected to a fishing expedition and series of wholly irrelevant questions of one of the state's witnesses.

D. The court's action in denying a question proffered by the defense to a witness for the state which question was:

> "In other words, it's your testimony that there were no racial restrictions, there were none at that time, and there are none now, with reference to the use of any of the facilities of the Audubon Regional Library, is that a fact?"

This is included in bill of exception number 6.

E. The court's denial of the following question:

> "Isn't it a fact, Mrs. Perkins, that the Blue Bookmobile was the one that was designated to be used by Negroes only?"

This is included in bill of exception number 7.

F. The court's denial of the following question:

> "And as sheriff of this parish, you would be in a position to know that it has been customary for the parish to maintain segregation of the races?"

This is included in bill of exception number 9.

Timely bills of exceptions were reserved to all the above errors.

9. Petitioners aver that they are desirous of applying to the Supreme Court of the United States for a Writ [fol. 41] of Certiorari and Review, or appeal to review the decision of the Honorable Court upon the issues shown by the record in this case; and that petitioners desire that they be given a stay in the execution of their sentences in which to apply to said court; and that the decree or mandate of this Honorable Court be stayed so that petitioners will have an opportunity to so present their application to the Supreme Court of the United States for relief.

[fol. 42]

II. Alternative Application for Writ of Habeas Corpus

The Alternative Petition of Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie appearing herein through undersigned counsel with respect represents:

1. That above defendants were charged, tried and convicted in the 20th Judicial District Court with violation of L.S.A.-R.S. 14:103.1.

2. That defendant Henry Brown was sentenced to pay a fine of $150.00 and costs and in default of fine to serve 90 days in the Parish Jail. That the other four defendants were sentenced to pay a fine of $35.00 and costs and in default of fine to serve 15 days in the Parish Jail.

3. That this is an unappealable case, being a misdemeanor.

4. That application for supervisory writs was made in this Honorable Court and denied on Monday, October 26, 1964.

5. That an application for a Stay in the Execution of the sentence was made in this Honorable Court on

Wednesday, October 28, 1964 and as yet has not been acted upon to petitioners knowledge.

6. Petitioners have been informed that while formerly This Honorable Court granted Stays in the Execution of sentences: that no longer is this the case where certiorari is denied and it is now the duty of the trial court to act upon said petition.

7. That following the new procedure petitioners applied for a Stay in the execution of their sentences to Judge John R. Rarick of the 20th Judicial District Court. This petition was denied on November 2, 1964.

8. That petitioners, Robert Smith and Cleveland McKinzie were arrested on Friday, October 30th, 1964 by the authority of a bench warrant issued by Judge John R. Rarick.

9. That petitioners Henry Brown, L. C. Bibbins, and Willie Kelly fear they will be unlawfully arrested and jailed.

[fol. 43] 10. That all five petitioners have a right to a stay in the execution of their sentences; and that Robert Smith and Cleveland McKinzie are being unlawfully detained. That this right was created once application for a stay had been made to the State Supreme Court according to the old procedure and had been reinforced once application had been made for a stay to the trial judge.

11. That the refusal of Judge John R. Rarick is an abuse of his discretion and a violation of defendants' right not to be deprived of their liberty without due process of law as guaranteed by the Fourteenth Amendment of the U. S. Constitution.

12. That the refusal of the trial judge to grant the Stay of Execution of sentence is in violation of the following laws:

1.) L.S.A.-R.S. 15:539:

"No other than a suspensive appeal is allowable in any criminal case."

2.) L.S.A.-R.S. 15:550:

"No person convicted of a felony shall be discharged on bail pending his appeal; provided, that when a sentence of less than five years at hard labor is actually imposed, bail shall be allowed pending appeal and until final judgment."

3.) L.S.A.-R.S. 15:551:

"Whenever an accused shall have taken an appeal in a misdemeanor case, the trial judge shall exact of him a bond with good and solvent sureties, in such sum as the trial judge shall fix, conditioned upon the appearance of said accused in the trial court to receive such sentence as the appellate court shall have affirmed."

13. That it is not necessary for petitioners to go through an exercise in futility by requesting Habeas Corpus of the trial judge since he has denied a Stay in the execution of their sentences.

14. That today, November 3, 1964, is election day and all courts are closed thus preventing the securing of certified copies of the bench warrants for the arrests of petitioners, and that a request has been sent to the Clerk of the 20th Judicial District Court for same.

[fol. 44]

Wherefore, petitioners pray that after due consideration that this Honorable Court grant them a reasonable stay of execution and that they be permitted a delay of 90 days in which to prepare and file in the Supreme Court of the United States their application for a writ of Certiorari or appeal to review the decision of this Honorable Court and that the mandate and decree of this Honorable Court as well

as the execution of the sentence of the District Court be withheld accordingly and for all general and equitable relief.

Alternatively, petitioners pray that a Writ of Habeas Corpus issue forthwith directing the Sheriff of East Feliciana Parish, Arch V. Doughty to show cause within three days why the Writ should not be granted.

Alternatively, petitioners pray that the premises and annexed affidavit considered that a Writ of Mandamus do issue herein directed to the Honorable Judge John R. Rarick, Judge of the 20th Judicial District Court commanding him to sign the requested Stay order and immediately release all defendants arrested as a result of his bench warrant in case number B-4420, State of Louisiana v. Henry Brown, et al. or that he show cause to the contrary, if any he can or have, on such a day and at such an hour as this Honorable Court may order and that after due proceedings had that said Writ of Mandamus be made perpetual and for all general relief.

Robert F. Collins, Nils R. Douglas, Lolis E. Elie, Attorneys for Defendants, 2211 Dryades Street, New Orleans, Louisiana, By: Nils R. Douglas, Trial Attorney.

Order

Let petitioners be granted a Stay of Execution in the above matter for days from 1964.

.....

Chief Justice

New Orleans, Louisiana
1964.

[fol. 45]

Order

Considering the petition of Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie filed herein, claiming that they are illegally imprisoned and restrained of their liberty by Sheriff Arch V. Doughty

in the East Feliciana Parish Jail and it appearing that a writ of habeas corpus ought to issue,

It Is Ordered that a writ of habeas corpus issue out of and under the seal of this court, directed to the said Arch V. Doughty commanding him to have the bodies of Robert Smith and Cleveland McKinzie before me in the court room of this court on the day of 1964. To do and receive what shall then and there be considered concerning the said Robert Smith and Cleveland McKinzie, together with the time and cause of their detention and that he, the said Arch V. Doughty, have then and there the said writ.

.....
Chief Justice

New Orleans, Louisiana
1964.

Order

It Is Ordered that an alternative writ of Mandamus issue herein, directing the respondent Judge to comply with the demand of the relator, or show cause to the contrary on the ..... of ..... 1964 at ..... o'clock . M. why the relief should not be granted.

.....
Chief Justice

New Orleans, Louisiana
1964.

[fol. 46] *Duly sworn to by Nils R. Douglas, jurat omitted in printing.*

[File endorsement omitted]

[fol. 47]

ATTACHMENT TO APPLICATION

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

No. B 4420

Filed:

STATE OF LOUISIANA

vs.

HENRY BROWN, ET AL.

PETITION FOR STAY OF EXECUTION OF SENTENCE

NOW INTO COURT, comes Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKenzie who with respect represents:

1. That above defendants were charged, tried, and convicted of violation of L.S.A. R.S. 14:103.1.
2. That this is an unappealable case, being a misdemeanor.
3. That a petition for supervisory writs to the State Supreme Court was denied on October 26, 1964.
4. That formerly the State Supreme Court granted stays of execution in cases like this but now the District Court must do so.
5. That certain errors were made during the trial to which bills of exceptions were urged. The same errors were urged in a motion for a new trial. These errors violate defendants rights under the U. S. Constitution and U. S. laws, rights to liberty of speech and

assembly guaranteed by the First and fourteenth amendments to the U. S. Constitution, rights to privileges, immunities, due process and equal protection of the laws guaranteed by the Fourteenth Amendment of the U. S. Constitution.

Wherefore, petitioners pray that they be granted a stay of execution in which to prepare and file in the Supreme Court of the United States their application for a writ of Certiorari or appeal to review the decision of this court.

COLLINS, DOUGLAS & ELIE
2211 Dryades St.
New Orleans, Louisiana

By: /s/ NILS R. DOUGLAS

Order

Let petitioners be granted a stay of execution in the above matter for a period of 120 days.

.....
Judge

Clinton, Louisiana
November , 1964

[Handwritten notation—November 2, 1964—Motion denied for a stay.—Applicants relief to U. S. Supreme Court remains open—J. R. Rarick, Judge—20th Judicial Court of Louisiana]

[fol. 48]

IN THE SUPREME COURT OF LOUISIANA

No. 47,496

STATE OF LOUISIANA

vs.

HENRY BROWN, ET AL.

PETITION FOR STAY OF EXECUTION OF SENTENCE AND ORDER GRANTING SAME—Filed November 24, 1964

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie, defendants in the above numbered and entitled cause, with respect represents:

1. That the decree of this Honorable Court rendered October 26, 1964, refusing their Application for Writs of Mandamus, Certiorari and Prohibition and, thus affirming the verdict and sentence of the Twentieth Judicial District Court of Louisiana is final, there being no right of rehearing therefrom.

2. Petitioners aver that the opinion and decree of this Honorable Court deprives them of their rights guaranteed under the First and Fourteenth Amendments to the Constitution of the United States, depriving them of freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws and also deprives them of rights granted by the Sixth Amendment of the Constitution of the United States and of rights guaranteed by Section 9, Article One of the Louisiana Constitution, which rights are guaranteed all citizens of the State of Louisiana and the United States.

[fol. 49] 3. Petitioners aver that the following errors were made in the trial of the charges against them:

(1) The court's action in denying questions 6 and 7 of the application for a bill of particulars. Among the questions asked in the application for a bill of particulars were:

6. Does the State contend that the mere presence of the defendants in the Audubon Library building violate L.S.A.-R.S. 14:103.1?

7. Does the State contend that the public is not generally invited to use the facilities and resources of the Audubon Library building in the Town of Clinton?

This is included in bill of exception number one.

(2) The court's action in denying defendants Motion to Quash. In the Motion to Quash defendants set out rights protected under the First and Fourteenth Amendments free speech, and assembly and denials of Fourteenth Amendment due process and equal protection rights. Petitioner does not waive any of the other allegations made in the Motion to Quash. This is included in bill of exception number two.

(3) The court's action in denying bills of exceptions numbered 3, 4 and 5 by which defendants objected to a fishing expedition and series of wholly irrevelant questions of one of the state's witnesses.

(4) The court's action in denying a question proffered by the defense to a witness for the state which question was:

"In other words, it's your testimony that there were no racial restrictions, there were none at that time, and there are none now, with reference to the use of any of the facilities of the Audubon Regional Library, is that a fact?"

This is included in bill of exception number 6.

[fol. 50] (5) The court's denial of the following question:

> "Isn't it a fact, Mrs. Perkins, that the Blue Bookmobile was the one that was designated to be used by Negroes only?"

This is included in bill of exception number 7.

(6) The court's denial of the following question:

> "And as sheriff of this parish, you would be in a position to know that it has been customary for the parish to maintain segregation of the races?"

This is included in bill of exception number 9.

Timely bills of exceptions were reserved to all the above errors.

4. Petitioners aver that they are desirous of applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal, to review the decision of the Honorable Court upon the issues shown by the record in this case; and that petitioners desire that they be given a stay in the execution of their sentences in which to apply to said court; and that the decree or mandate of this Honorable Court be stayed so that petitioners will have an opportunity to so present their application to the Supreme Court of the United States for relief.

5. Petitioners further aver that they received a stay in the execution of their sentence of thirty days. This stay was signed on November 4, 1964. This stay will expire on December 4, 1964 and they need an additional thirty days within which to complete their application to the United States Supreme Court.

Wherefore, petitioners pray that after due consideration that this Honorable Court grant them a reasonable stay of execution and that they be permitted an additional delay of thirty days in which to prepare and file in the Supreme Court of the United States their application for a Writ of Certiorari or appeal to review the decision of this Honorable Court and that the mandate and decree of this

Honorable Court be withheld accordingly and for all general and equitable relief.

[fol. 51] Robert F. Collins, Nils R. Douglas, Lolis E. Elie, 2211 Dryades Street, New Orleans, Louisiana, By: .....; Murphy W. Bell, 971 South 13th Street, Baton Rouge, Louisiana.

Of Counsel: Carl Rachlin, 280 Broadway, New York, New York.

Floyd B. McKissick, 213½ W. Main Street, Durham, North Carolina.

Order

Let petitioners be granted a stay of execution of the decree of this Honorable Court for a period of days.

.....
Chief Justice

New Orleans, Louisiana, , 1964.

Certificate

I certify that a copy of this petition has been mailed to opposing counsel.

Nils R. Douglas

[fol. 52] *Duly sworn to by Nils R. Douglas, jurat omitted in printing.*

[File endorsement omitted]

[fol. 53]

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

CLERK'S CERTIFICATE

I, Harold A. Moise, Jr., Deputy Clerk of the Supreme Court of Louisiana, do hereby certify that the attached pages numbered 1-55, inclusive, constitute true and correct copies of all the documents as filed in this Court in the

cause entitled "State of Louisiana versus Henry Brown et al.," bearing number 47496 on the docket of this Court and number B-4420 on the docket of the 20th Judicial District Court, Parish of East Feliciana.

In Witness Whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 1st day of December, A. D., 1964

HAROLD A. MOISE, JR.
Deputy Clerk, Supreme Court of Louisiana

[fol. 54]

IN THE 20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA, LOUISIANA

EXTRACT OF COURT MINUTES

Wednesday March 11th, 1964 Court opened at Nine O'clock A.M.

Present and presiding Hon. John R. Rarick, Judge.

Reading of the minutes dispensed with.

State of Louisiana Vs. B-4420 Henry Brown, L. C. Bibbins, Robert Smith, Cleveland McKinzie (Disturbing the Peace)	All defendants were formally arraigned and each pleaded not guilty and the case was ordered assigned for March 25, 1964; further ordered that Murphy W. Bell be notified of said assignment. The bond continued on each defendant.

Court adjourned until March 16th, 1964 at Nine O'clock A.M.

Monday March 23, 1964, Court opened at Nine O'clock A.M.

Present and presiding Hon. John R. Rarick, Judge

State of Louisiana VS B-4420 Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith, Cleveland McKinzie (Dist. Peace)	This case came on for trial pursuant to previous assignment. Present representing the state Hon. R. H. Kilbourne, D.A. Present representing the defendants Murphy W. Bell, attorney of Baton Rouge; Nils Douglas, attorney of New Orleans, La. Attorneys for defendants filed in open court and served on attorney for the state an application for bill of particulars, a Motion to Quash; said motions fixed for trial on March 25, 1964 at Ten O'clock A.M.

Court adjourned until March 25th, 1964 at Nine O'clock A.M.

Wednesday March 25th, 1964 Court opened at Nine O'clock A.M.

Present and presiding Hon. John R. Rarick, Judge.

Reading of the minutes dispensed with.

State of Louisiana Vs B-4420 Henry Brown, et al. (Dist. Peace)	This cause came on for trial pursuant to previous assignment. Present representing the State the Honorable R. H. Kilbourne, District Attorney; present representing the defendants; Elois Elie attorney of New Orleans, Louisiana, Mrs. Irma Parden was duly sworn to take the notes of testimony. The motion for bill of particulars was taken up and the District Attorney filed an answer without

answering No. 6 & 7 and the court overrules the motion to have the D.A. answer the said 6 and 7. The motion to quash was taken up and argued; the Court overruled the motion to Quash; to which ruling the counsel for defendants reserves a Bill and makes the motion and ruling of the court a part thereof. Merian Fiengold was duly sworn as a witness in this case and her testimony was not finished and the case was continued until April 6th, 1964 for further testimony.

Court adjourned until March 31, 1964 at Nine O'clock A.M.

Monday April 6, 1964 court opened at Ten O'clock A.M.

Present and presiding Hon. John R. Rarick, Judge.

Reading of the minutes dispensed with.

State of Louisiana
VS B-4420
Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie
(Dist. Peace)

This cause came on for trial this day pursuant to previous assignment. Present representing the State Hon. R. H. Kilbourne, D.A.; Present representing the Defendants Murphy Bell, attorney of Baton Rouge, and Elois Eli attorney of New Orleans. Due to the absence of the Court reporter for some unknown reason the case by agreement of counsel continued the case until April 9th, 1964; all witnesses notify by the Sheriff to be back without further notice.

Court adjourned until April 8th, 1964 at Nine O'Clock A.M.

[fol. 55]

Thursday April 9, 1964 Court opened at Ten O'clock A.M.

Present and presiding Hon. John R. Rarick, Judge.

Reading of the minutes dispensed with.

State of Louisiana
Henry Brown, Willie
Vs B-4420
Kelly, L. C. Bibbins,
Robert Smith and
Cleveland McKinzie
(Dist. the Peace)

This cause came on for trial pursuant to previous assignment being continued from March 25th, 1964 for further testimony. Present representing the State Hon. R. H. Kilbourne. Present representing the defendants: Robert Collins attorney from New Orleans, La. Murphy W. Bell attorney of Baton Rouge, La. Mrs. Irma Parden was duly sworn to take the notes of testimony. After hearing testimony of the witnesses, attorneys for defendants ask for a directed verdict. After argument of counsel the court overrules the motion for a directed verdict. After hearing all of the evidence the court found the five defendants guilty as charged. Through counsel the defendants ask for the delay of sentence until May 26, 1964 at Ten o'clock A.M.; Further ordered that their bonds be continued.

Exhibits offered:

Ex. #1 A post card from Aud. Library

Ex. #2 An envelope in which a book was mailed to Henry Brown;
Also the book entitled:
Story of the Negro
by Arna Bontempts, Ex. #3

The court granted permission to return the book to Audubon Library, East Feliciana Parish, La.

State offered one Exhibit newspaper clipping marked State #1.

Court adjourned until April 13, 1964 at Nine O'clock A.M.

Monday May 25th, 1964 court opened at nine o'clock A.M.

Present and presiding Hon. John R. Rarick, Judge.

Reading of previous minutes dispensed with.

State of Louisiana Vs. B-4420 Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith, Cleveland McKinzie	On request of Mrs. Erma Parden, Court reporter, the Court granted an extension of time for filing transcript until June 26, 1964.

Court adjourned until Tuesday, May 26, 1964, at nine o'clock A.M.

Monday May 26th, 1964 court opened at Ten o'clock A.M.

Present and presiding Hon. John R. Rarick, Judge.

Minutes read and approved.

State of Louisiana Vs B-4420 Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith, Cleveland McKinzie (Dist. Peace)	The defendants and their counsel being present in Court for sentence this day. And due to the extension granted the court reporter for filing of her notes of testimony the court ordered sentence deferred until July 14, 1964 at Ten O'clock A.M.

Court Adjourned until May 27, 1964 at Nine O'clock A.M.

[fol. 56]

Tuesday, July 14, 1964 court opened at Nine o'clock A.M.

Present and presiding Hon. John R. Rarick, Judge.

Reading of the minutes dispensed with.

State of Louisiana
VS B-4420
Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie

A motion for a new trial was filed argued and the court refused and overruled motion for a new trial; to which ruling counsel for defendants excepts and reserves a formal bill; and asked that the ruling of the court be attached thereto and made a part thereof.

The defendants being present in court and the Court ordered that Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie be sentenced to pay a fine of $35.00 and cost; in default of payment of fine and cost to serve 15 days in the parish jail. The defendant Henry Brown being absent and counsel for defendant waived his being present for sentence the court ordered that he be sentenced to pay a fine of $150.00 and cost; in default of payment of fine and cost to serve 90 days in the Parish jail. Counsel for defendant asked that execution of the sentence be stayed; the court ordered stay of execution of the sentence for a period of 21 days; bond continued.

Court adjourned until July 15th, 1964 at Nine O'clock A.M.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 57]

Tuesday, July 28th, 1964 court opened at nine o'clock A.M.

Present and presiding Hon. John R. Rarick, Judge.

Reading of the minutes dispensed with.

State of Louisiana
Vs B-4420
Henry Brown,
Willie Kelly,
L. C. Bibbins,
Robert Smith and
Cleveland McKinzie
(Dist. Peace)

In this cause Nils Douglass, attorney for the defendants, appeared representing the defendants. Hon. R. H. Kilbourne, present in court representing the State. The following instruments were duly filed by counsel for defendants;

First: Notice of Application for supervisory Writs;

Please be advised that defendants in above styled and numbered cause will make application to the Louisiana Supreme Court for Writs of Certiorari, Mandamus and Prohibition to invoke the Supervisory Jurisdiction of said Supreme Court in order to review the sentence and conviction in the above styled and numbered cause.

Filed and Rec. 7-30-64
Inez M. Durham, Clerk

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street,
New Orleans, La.

2nd: Bill of Exception Number One—

Wherefore, the applicants pray that the State of Louisiana through the District Attorney, Parish of East Feliciana be ordered to show cause on a day

and at a time certain why the said Bill of Particulars, as requested above, should not be furnished and served upon your applicants, defendants herein, and all other relief as they may be entitled.

Robert F. Collins,
Nils R. Douglas
Lolis E. Elie

3rd: Bill of Exception Number 2: Wherefore, the said defendants, Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie pray that this motion to Quash be maintained, and that the said information be declared null and void, and that they be discharged therefrom.

4th: Bill of Exception Number 3: Defendants now perfect the above recited bill of exception making the question the objection by the defense and the ruling of the court all a part of the formal bill of exception and first submitting this bill of exception to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the statute in such case made and provided which is done accordingly this day.

5th: Bill of Exception Number 4: Defendants now perfect the

above recited bill of exception making the question the objection, and the argument of counsel all a part of the formal bill of exceptions and first submitting this his bill of exception to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this day.

6th: Bill of Exception Number 5: Defendants now perfect the above recited bill of exception making the question, the answer and argument of counsel all a part of the question, the answer and argument of counsel all a part of the formal bill of exceptions and first submitting this bill of exception to the District Attorney now tenders the same to the court and prays that the same be signed and sealed by the Judge of this court pursuant to the Statute in such case made and provided which is done accordingly this day.

7th: Bill of Exception Number 6: Defendants now perfect the above recited bill of exception making the testimony of the witness and the question a part of the bill of exceptions and first

submitting this bill of exception to the District Attorney now tenders the same to the Court
[fol. 58] and prays that the same be signed and sealed by the Judge of this Court pursuant to the Statute in such case made and provided which is done accordingly this day.

8th: Bill of Exception Number 7: Defendants now perfect the above recited bill of exception making the testimony of the witness and the question a part of the bill of exceptions and first submitting this bill of exception to the District Attorney now tenders the same to the court and prays that the same be signed and sealed by the Judge of this Court pursuant to the statute in such case made and provided which is done accordingly.

9th: Bill of Exception Number 8: Defendants now perfect the above recited bill of exception making the question, and the answer and the ruling of the court all a part of the formal bill and first submitting this his bill of exception to the District Attorney now tenders the same to the court and prays that the same be signed and sealed by the Judge of this Court pur-

suant to the statute in such case made and provided which is done accordingly this day.

10th: Bill of Exception Number 10: There is no evidence in the record to support the judgment, Wherefore, mover prays that this motion be granted and a new trial be ordered in these proceedings; subsequently, a hearing was had on the motion for a new trial after which hearing the motion was denied and counsel for defendant timely excepted to the ruling of the Court, making the Motion for a new trial and the ruling of the Court all a part of the bill of exception. Your defendants now perfect this their bill of exception making a part of same the motion for a new trial, and the entire record and the ruling of the Court all a part of the bill of exceptions and first submitting this his bill of exceptions to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this day.

rt adjourned until July 29th, 1964 at Nine O'clock A.M.

lerk's Certificate to foregoing paper (omitted in print-
).

[fol. 59]

IN THE 20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA, LOUISIANA

Number B-4420

STATE OF LOUISIANA,

VS.

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH, & CLEVELAND MCKINZIE.

Transcript of Testimony—March 25, 1964 and April 9, 1964

The transcript of the testimony of the above styled case taken in open court at the court house of East Feliciana Parish, Clinton, Louisiana, beginning at 2:00 o'clock P. M., March 25, 1964; and at 10:00 A. M., April 9, 1964. Hon. John R. Rarick, Judge, presiding.

APPEARANCES:

For plaintiff

Richard Kilbourne, Esq., District Attorney, 20th Judicial District, Clinton, Louisiana.

Defendants

Murphy W. Bell, Esq., 971 South 13th Street, Baton Rouge, Louisiana.

Defendants, on March 25, 1964

Lolis E. Elie, Esq., 2211 Dryades Street, New Orleans, Louisiana.

Defendants on April 9, 1964

Robert F. Collins, Esq., 2211 Dryades Street, New Orleans, Louisiana.

[fol. 61]

DISCUSSION BY COUNSEL ON APPLICATION FOR BILL OF PARTICULARS AND ON THE MOTION TO QUASH AND RULINGS THEREON

Court Called to Order at 2:00 P.M., March 25, 1964.

By Mr. Bell: Taking up the preliminary motions in this State of Louisiana vs. Henry Brown, etc., #B-4420, if it please the Court, we would like to take up the Application for a Bill of Particulars first. Mr. Kilbourne has filed an Answer to this Application in which he answers the first 5 particulars. He failed to answer #6 and #7, and that is the bone of contention on which we are proceeding today, Your Honor, whether or not the District Attorney should be compelled to answer particularly #6 and #7 in order that these defendants may be able to properly plea to the Bill of Information filed herein. The article #6 reads, "Does the State contend that the mere presence of the defendants in the Audubon Library Building violate the R. S. 14, 103.1?" As Your Honor knows, this particular Statute was enacted by the State Legislature in 1960 pursuant to the demonstrations that have been going on in this Court, and our Legislature enacted this in order to be better able to deal with this type of conduct on the part of individuals who [fol. 62] were protesting violation of their civil rights. However, this article is a rather lengthy article and as we have alleged in the Motion to Quash, rather vague; and we are asking under these 2 articles #6 and #7, what type of conduct—we want to know what did these persons do that made them liable to a Bill or charge being filed against them by the State of Louisiana that claimed disturbance of the peace. We are asking: "Is the mere presence of these defendants in the building the cause of the violation?"

Then we are asking in #7 in order to determine what type of disturbance this is: "Does the State contend that the public is not generally invited to use the facilities and the books of the Audubon Library Building in the Town of Clinton?" I would like to know this so we will know what

type of criminal conduct these persons performed when they allegedly entered the Audubon Library Building in the Town of Clinton on that particular day. In order to determine how to apply 14, 103.1, we would like for the State to exhibit a position on whether or not the public is generally invited to use this building; or whether or not, being the [fol. 63] State has contended that the very fact that these 4 or 5 defendants, when they entered the building, their mere entering and presence violated the provision of this Statute. However, there are other provisions of this Statute which we are attacking in the Motion to Quash, but in order to be better able to plead and to argue whatever other pleadings we have to file, we think that the State in all earnestness and fairness, in order that these defendants may be able to ascertain what type of standards that the State has applied in order to make certain conduct criminal, we think that article #6 and #7 of that particular Bill of Particulars should be answered, in order that these people may be informed of what type of conduct the State has considered criminal on behalf of the public in a situation such as this.

By Mr. Kilbourne: Your Honor, I don't see how the Bill of Information could be any more explicit than it is. It says that the defendants did this: "The intent to provoke a breach of the peace, and under circumstances such as the breaching of the peace might be occasioned thereby, they [fol. 64] congregated together in the Audubon Library Building in the Town of Clinton, and they refused to leave when ordered to do so by Mrs. Perkins, who is in charge, and also refused to leave when ordered to do so by the Sheriff." That's what they are charged with. In paragraph #5 and #6 where the State contends that the mere presence of the defendants violated the Statute, that's irrelevant, Judge. We contend what we stated in the Bill of Information, that's what we contend they did, and that's what we contend was a violation of the Statute. "Does the State contend that the public is not generally invited to use the facilities?" What does that have to do with it? We don't make any

contention at all about that, we just contend what we stated in the Information.

By Mr. Bell: Your Honor, I imagine we can argue it further, but we will submit the application. Your Honor, co-counsel has suggested that maybe instead of your ruling on this application for a Bill of Particulars, you rule on the Motion to Quash and maybe that would dispose of the entire matter because they are pretty close akin, if Mr. Kilbourne wouldn't object to that.

[fol. 65] By Mr. Elie: If Your Honor please, the Bill of Information in this matter is very closely akin to a similar bill that was filed in the matter, State of Louisiana vs Jerome Smith, et al. That case is to be found in 146 So. 2nd, page 152. I was one of the attorneys in this matter, and we made the same argument, some members of the Congress of Racial Equality were picketing in New Orleans. The police officers told them that they could not picket in the place that they wanted to picket, and of course they were arrested and charged under 14, 103.1. The trial judge found them guilty as charged. We appealed this matter to the State Supreme Court, and the case was reversed. The Supreme Court stated in effect through Judge Fournet that it wasn't sufficient to retract the language of the Statute; but that a defendent had a right to know specifically what he was charged with. Now, to say that a person performs an act and that a breach of the peace may be occasioned thereby, this is no standard whatever. Any police officer can make a contention right at this minute that my argument here is such that a breach of the peace may be occa-

[fol. 66] sioned and thereby arrest me. This is anti-justice. State of Louisiana vs Smith was the latest pronouncement of the State Supreme Court, but taking it a step further, we find one case in particular involved—I would like to give the Court this citation, the Town of Ponchatoula vs Bates, that's at 173 La. 823, 138 So. 851. The Supreme Court of Louisiana in that instance says: "The mere fact that persons participated in conduct that tends to disturb a community, intellectual unrest so to speak, if the conduct is such that the

people of the community don't agree with what they are doing, this is not sufficient to sustain a charge of disturbing the peace." More closely allied with this case is State vs Sanford, which is in 14 So. 2nd, 778. In this case some 30 Jehova's witnesses went into the Town of Shreveport and they were very unpopular, they weren't wanted there; and they went in and gave out literature and they were picked up and they were first told to stop distributing this literature. They refused to do so, and again, they were arrested, prosecuted. Our own State Supreme Court held that this did not make peaceful conduct criminal simply because you [fol. 67] don't agree with them. Going a step further, we have several cases that are nearly on all fours with this case, another Shreveport case. This case is in 82 Supreme Court, 1188. In that case a group of Negroes who were members of the Congress of Racial Equality went into the bus depot, and they went into the section that was traditionally the white section—this was subsequent to the ICC ruling—and they were arrested for going and sitting in the white side of that bus depot, and they were told by the police officers to leave. They said they had a right to be there, and indeed they did have a right. "If you don't leave we are going to arrest you," so they arrested them. They were convicted in the lower court, and the State Supreme Court denied writs without any reasons, and the U. S. Supreme Court on a procurium without hearing any arguments said that the mere fact that you didn't want these people in this facility, this isn't a crime. I suggest to Your Honor that the only way that this 14, 103.1 can be constitutional, if it applies to loud and boisterous conduct. I submit to the Court that you can make anything a crime. I can [fol. 68] walk out of this courtroom, and any police officer can decide that my walking out of this courtroom tends to cause a breach of the peace, and arrest me. There is no standard in this Statute, whatsoever, so this is why we say in the language of this Statute it's insufficient to inform the defendants of the nature of the charge against them, number one. Number two, that this is very obviously an unconsti-

tutional application of this Statute, and it has been decided by our own State Supreme Court and by the U. S. Supreme Court on each occasion that these type of matters have been before the Court.

By Mr. Kilbourne: If Your Honor please, I am not familiar with the decisions that counsel has cited, and of course, I didn't know before the argument came up what authority he was relying on; but the State contends in any instance a person can do a lawful thing in such a way as to disturb the public. Counsel could indeed walk out of here in such a way as to disturb the public, for instance if he were carrying a loaded gun, or something of that kind. True, there is no law against a man carrying a gun, he has a right to do that, but he can do that in such a manner that [fol. 69] it would disturb the public. It's a very simple thing, and the State only contends that they went in to the Library for the specific purpose of creating a breach of the peace. It's entirely different from them going in there for some lawful purpose, for instance, to get a book or something of that nature. If the State can prove as it is alleged in the Information that they went in there for the specific purpose of creating a disturbance in the Library, and in such a manner that it created a disturbance; and if it was foreseeable, and they foresaw that, if the State can prove that, as alleged in the Information, they are certainly guilty of violating the Statute. It is further alleged that they refused to leave when they were ordered to do so. You could come right in here in this courtroom and create a disturbance in the same manner. You get 5 or 6 people to walk in here and more or less take over your courtroom, and they are ordered out and they refuse to leave, regardless of the fact that they might be guilty of contempt of court, they would also be guilty of disturbing the peace, under this Statute, [fol. 70] and that's what the State is contending.

By Mr. Elie: If Your Honor please, I am certainly willing to admit that it is possible for someone to perform an act that would disturb the peace, there is no question about

this. The question, and the only question before this Court, is whether or not Negroes going to a public library, in the absence of loud and boisterous conduct, can be construed as a crime. This is the only issue before the Court, not whether I walk out of here with a loaded gun, but if I walk out of here just as I am with my briefcase, that is the issue before the Court. There isn't anything here to suggest any loud or boisterous conduct, there is nothing to suggest that it was their intent to disturb the peace, that just isn't before the Court, Your Honor.

By the Court: I believe that's what is in the Indictment, to disturb the peace, that would be an intent to provoke a breach of the peace.

By Mr. Elie: I submit the matter.

By the Court: We all agree, of course, that people can do a lot of things that are normally lawful, and if they [fol. 71] intend to do a lawful act in a manner to cause it to be unlawful, for example, to walk in the Library with our clothes off, it would be a lawful act as far as we were able to go in there, but we would certainly be disturbing the peace. It wouldn't be any act, I mean as far as any violence or any noise, to walk in there and start tearing the pages out of the books, and say you have a lawful act and freedom of expression to tear out the pages that you didn't like because of what was said in the book. I guess there is a point of no return; however, I don't think your argument applies in this one, inasmuch as the Act goes further with the suggestion that they did have a right to be there, and it says that they went over with the intent to cause a breach of the peace.

By Mr. Elie: We submit the matter on the Application for a Bill of Particulars and on the Motion to Quash.

By the Court: The Court notes that in response to the Application for a Bill of Particulars filed by the defendants, the State has filed a Bill and Answer to all paragraphs except #6 and #7. Not having made any cursory examination [fol. 72] of the cases that were cited, and inasmuch as the Indictment certainly tracks the language of the Statute

itself, the Court feels that the information filed herein along with the Bill of Particulars certainly adequately apprises the defendants, and therefore the Court finds no merit in ordering the State to answer questions #6 and #7, and will deny the same.

By Mr. Bell: To which ruling of the Court we respectfully except, and ask that a formal Bill of Exceptions be reserved, making a part of the Bill, the Application for the Bill of Particulars, the Answer of the District Attorney, and the ruling of the Court all a part of the formal bill.

By the Court: The Motion to Quash again relates back to the sufficiency of the phraseology of the Bill itself, and further the Plea of Unconstitutionality. We must remember the argument we had didn't cover the rights under the State and Federal Constitution, and the Laws of the United States. The Court feels that justice can best be served in this case by hearing the facts, and the Court will deny the Motion to Quash.

[fol. 73] By Mr. Elie: To which ruling counsel respectfully reserves a Bill of Exceptions, making the Motion, the ruling of the Court a part thereof.

By the Court: You may proceed.

By Mr. Kilbourne: The State calls Miriam Feingold.

[fol. 74] The witness, MIRIAM FEINGOLD, after first having been duly sworn to tell the truth, the whole truth, and nothing but the truth, so help her God, testified as follows:

Direct Examination.

By Mr. Kilbourne:

Q. State your name for the record, and spell it, please?
A. Miriam Feingold.
Q. What is your residence?
A. Clinton, Louisiana.
Q. How long have you been a resident of Clinton?
A. Since August of 1963.

Q. What was your residence before that?
A. New York City.
Q. Your address?
A. 64 Sterling Street, Brooklyn, New York.
Q. Under what circumstances did you come to Clinton, Louisiana?
A. I came as a task-force—

By Mr. Bell: If it would please the Court, I would like to interpose an objection here that it is irrelevant and immaterial and has nothing to do with this particular case what circumstances she came here under. I think the question here is whether or not these 5 defendants were guilty of disturbing the peace by entering the Audubon Library, and I think that's irrelevant and immaterial to the issue in this case.

[fol. 75] By the Court: What is your offering to prove?

By Mr. Kilbourne: If Your Honor please, I am merely laying the foundation for further examination of the witness. I don't think I should be required to ask my questions in any particular order.

By the Court: The Court overrules the objection, proceed.

By Mr. Bell: We would like to reserve a Bill of Exceptions, making the question, the objection, and the ruling of the Court all a part of a formal Bill.

Q. Will you answer the question?
A. I came as a task-force worker for the Congress of Racial Equality.
Q. Where do you live in Clinton, what is your address in Clinton?
A. At the home of Mrs. Josephine Holmes.
Q. What is your race?
A. I am Caucasian.
Q. You are the only Caucasian residing at that residence at this time?
A. Yes, I am.
Q. The owner of the residence is a colored woman, a Negro?

A. Yes, she is.

Q. Are you a task-force worker for the Congress of Racial Equality at this time?

[fol. 76] A. Yes, I am.

Q. Under whose supervision are you, and control, if anyone?

A. We work under the supervision of Ronnie Moore.

Q. Do you know the defendants here today?

A. Yes, I do.

Q. All of them?

A. Yes.

Q. How long have you known them?

A. I couldn't say.

Q. Approximately how long?

A. Many months.

Q. Have you known all of them many months?

A. Some of them longer than others.

Q. Let's take Henry Brown, how long have you known Henry Brown?

A. I really couldn't say, I have known him a long time.

Q. Have you known him since August of 1963?

A. I really can't remember.

Q. Can you say about how long?

A. Well, I would say many months, that's about all I could say about it.

Q. Is he a member of the Congress of Racial Equality? Of the Clinton Branch?

A. I refuse to answer that question on the grounds of the First, Fifth, and Fourteenth Amendments of the Constitution of the United States.

By Mr. Kilbourne: Your Honor, will you ask this witness to answer my question?

[fol. 77] By the Court: The Constitution doesn't apply to you because you are not a defendant, and I don't believe it will incriminate you if you don't know if he is, or isn't.

By Miss Feingold: I believe I pleaded the First, Fifth and Fourteenth Amendments of the Constitution of the United States.

By the Court: Do you urge your question?

By Mr. Kilbourne: I do, Your Honor.

By Mr. Elie: Did the Court say that it was granting the witness immunity from prosecution if she answers the question?

By the Court: She is asking for immunity from identifying one of the other parties.

By Mr. Elie: She is saying, as I understood it, Your Honor, that by identifying another party here would tend to incriminate her.

By the Court: Her, but she has already said that she is a member of CORE.

By Mr. Elie: If Your Honor please, once any link in the chain of evidence—if she answers this question, she doesn't know where it will lead to, and I think she has a right to [fol. 78] refuse to answer if she feels that this will tend to incriminate her; and the Court, of course, can grant her immunity, then she has to testify.

By Mr. Kilbourne: If Your Honor please, I am not sure that I understand what the contention here is. Is she talking about her constitutional rights, or is she talking about someone else's constitutional rights?

By the Court: She feels that she might incriminate herself.

By Mr. Kilbourne: If Your Honor please, I think counsel is as well aware as I am that a witness's testimony in a criminal trial cannot be used against her.

By Mr. Elie: I am also well aware, Your Honor, that there is a Statute of the State of Louisiana that if a witness refused to testify, then except for perjury, the Court can grant the witness immunity, because although the testimony may not be used against the person, the District Attorney has his knowledge that he can use to bring the charge against the person. This is the reason for the existence of the Statute.

[fol. 79] By the Court: Which Statute are you referring to?

By Mr. Elie: We don't have the Code of Criminal Procedure with us. I know the Statute exists.

By Mr. Kilbourne: Your Honor, what I can't understand is how the question I asked her, whether Henry Brown was a member of the Congress of Racial Equality, could incriminate this witness.

By Mr. Elie: The witness is no lawyer, Judge.

By the Court: Do you re-urge your question?

By Mr. Kilbourne: Yes, Your Honor, I do.

By the Court: I will have to ask you to answer the question for the District Attorney. I can't see how it can possibly incriminate you.

By Mr. Bell: Judge, is there any way we can object to the question on the grounds that it's irrelevant and immaterial? Whether this man is a member of CORE really has nothing to do with the crime with which he is charged by the State. That's beside the issue and we are really [fol. 80] getting tied up on a question that is immaterial and irrelevant, that's what I think the main objection to the question is. However, as co-counsel has said, if the Court will grant the witness immunity from anything that she might say would be used against her, I feel all objection would be removed to the question. I don't see why the witness should be compelled to answer a question when she certainly would not be given the protection of the Court, that at least her answer might not be used against her. I know for a fact that she has already answered questions under the interrogation of the District Attorney, that may well be used against her, but I feel that the Court should grant the immunity to protect her from any further incrimination by the question, especially when we feel that the question is irrelevant and immaterial to the issue at hand.

By the Court: It staggers my imagination to see how anything that she has answered today could incriminate her. I am going to ask you to answer the question of Mr. Kilbourne.

By Mr. Elie: Your Honor, is the Court presently ordering the witness to answer the question?

[fol. 81] By the Court: Yes.

By Mr. Elie: We would then like to respectfully reserve a Bill to the Court ordering the witness to answer the question without first granting the witness immunity. With the Court's permission we would like to instruct the witness to answer the question.

By the Court: Let the minutes so show.

A. Would you repeat the question, please?

The Reporter Read the Question.

A. Yes, he is.

Q. Do you know whether or not Willie Kelley is a member of the Congress of Racial Equality?

A. No, I don't know.

Q. Do you know whether L. C. Bibbins is a member of CORE?

A. No, I don't know.

Q. Robert Smith?

A. I don't know.

Q. Do you know Robert Smith?

A. Yes, I do.

Q. Point him out, please?

A. He is sitting right there (indicating).

By Mr. Kilbourne: Is your name Robert Smith?

[fol. 82] By Robert Smith: Yes, sir.

Q. How about Cleveland McKinzie, is he a member of the Congress of Racial Equality?

A. No, I do not.

Q. Do you know where Henry Brown resides? Do you know what Parish he resides in?

A. East Feliciana Parish.

Q. Where does Willy Kelly reside?

A. What do you mean?

Q. What Parish does he reside in?

A. West Feliciana Parish.

Q. What Parish does L. C. Bibbins reside in?

A. West Feliciana Parish.

Q. What Parish does Robert Smith reside in?
A. West Feliciana Parish.
Q. What Parish does Cleveland McKinzie resid in?
A. West Feliciana.
Q. Do you know when and by whom the visit of these 5 defendants to the Audubon Library was planned?

By Mr. Elie: Objection, there is no testimony to show that it was planned, Your Honor, no sufficient predicate has been laid for this question.
By the Court: Will the District Attorney lay a little more foundation?

Q. Do you know whether or not this visit to the Audubon Library by these 5 defendants was planned in advance?
[fol. 83] A. Would you please specify what you mean by "planned in advance?"
Q. Yes, I will try to be a little more specific on that. I will put it this way: Was that one of the projects of the Congress of Racial Equality in this community, to have these men or other Negroes go to the Audubon Library?

By Mr. Bell: Your Honor, of course I have to object to that on the grounds that I think that is irrelevant and immaterial. I think these people are charged with disturbing the peace under 14, 103.1, and it's no charge of criminal conspiracy here at all; in the presence of a plan that would indicate a conspiracy. That's what I think the District Attorney is getting at now, he is attempting to prove a conspiracy, and no conspiracy has been alleged, neither has it been charged, just a blanket indictment for disturbing the peace. I think if the witness would answer a question like that, it certainly would indicate that she is testifying to a conspiracy, and that would involve a lot of other people besides these defendants.
By the Court: Do you want to be heard on it?
By Mr. Kilbourne: Yes, Your Honor, I believe I alleged [fol. 84] that they went there with the intent to provoke a disturbance of the peace, that's all I am getting at. Of course, every crime that has more than one defendant in-

volves also the crime of conspiracy. That doesn't necessarily mean that they have to be charged, but they could be charged, I will certainly admit that. I think the State is obliged to try to prove what the intent was to which these defendants went to the Library.

By the Court: The Court will overrule the objection.

By Mr. Bell: I would like to reserve a Bill of Exceptions, Your Honor, making the question, the objection, and argument of counsel all a part of the formal Bill of Exceptions.

Q. Will you read the question?

The Reporter Read the Question.

A. I never did hear an announcement to this business about whether or not I would be immune, and until I do, I refuse to answer that question on the grounds of the First, the Fifth, and Fourteenth Amendments to the Constitution of the United States.

By Mr. Kilbourne: Your Honor, I ask that this witness [fol. 85] be instructed to answer the question.

By the Court: Mr. Kilbourne, I can see this possibility that she—and still again, I don't know, you are calling her as your own witness, and I think she might be immune.

By Mr. Kilbourne: Well, the only thing about it, Your Honor, she is talking about granting her immunity, and I am sure Your Honor, and counsel will agree that except in very exceptional cases no one has the right to grant the witness immunity.

By the Court: I think under some of our prevailing cases today the easiest way to get immunity to to get into Court and testify, and then you have got immunity.

By Mr. Elie: Of course, Your Honor, I think in this instance the Court has suggested that the witness has immunity, and the District Attorney in a roundabout way, I suppose, has suggested the same thing, and we say the Court can resolve this pretty easily. The Court admits that here is an instance where the witness by answering this question may tend to incriminate herself. There are cases in which the Court has granted immunity—as a matter of

[fol. 86] fact, in many instances that's the only way the Court can get information about the underworld, that's possibly the best example of granting immunity, before a Congressional Committee.

By the Court: Do you have any argument before I rule?

By Mr. Kilbourne: I have no further argument.

By the Court: In this case the Court will sustain the refusal to testify on the grounds that it might incriminate her.

Q. Were there other attempts to enter other branches of the Audubon Library on the same date as this attempt to enter the Audubon Branch Library?

By Mr. Bell: Your Honor, I hate to keep objecting, but the Bill of Information reads that: "on the 7th day of March, 1964, these named defendants, with the intent to provoke a breach of the peace, and under circumstances such a breach of the peace might be occasioned, thereby congregated together in the Audubon Library Building in the Town of Clinton, Louisiana, and did then and there fail and refuse to leave said premises when ordered to do so by Mrs. Marshall Perkins, who then and there in lawful [fol. 87] charge of the said premises; and then and there further failed and refused to leave when ordered to do so by Sheriff Doughty." It appears to me that that's all we have to do—I am not trying to dictate to the State how to prove their case, but we haven't gotten on any of this evidence yet. We are talking about integrating other libraries and other places, and we haven't gotten on the points of this case. I submit that anything else other than proving that the persons here occasioned a breach of the peace over here in the Town of Clinton—that's relevant and material, anything else is irrelevant and immaterial. It might have some vague connection, and it might show a conspiracy, but no conspiracy has been charged, and that's all we are on now, conspiracy.

By Mr. Kilbourne: Your Honor, we still get back to the question of the intent with which the defendants went into the library. If they were in concert with others—I haven't

mentioned the word "integrate", but I see that counsel has, so we will talk about whether they specifically intended to integrate the library. If the evidence will show that that [fol. 88] was a concerted action by these defendants, and it may very well be a conspiracy, but that's up to me whether I want to charge them with that or not, I could have already charged them; but what I am getting at is this, if the evidence will show that these defendants and others with them acted in concert to what they say, "integrate the library," then we are getting down to the question of intent, because when you start talking about integrating something, you can easily be talking about provoking a disturbance of the peace, and it is common knowledge that that's what it has done all over the United States.

By Mr. Bell: I wasn't aware that I had used the word, "integrate," but if I have, I certainly wouldn't mind if the State would concede that the library is segregated, then it would cut some of the crust away from this thing and really get to the issue of the case. If we want to make that concession and concede that the Audubon Regional Library is segregated according to race, that Negroes are excluded, then we might be able to really get down and see what the situation really is.

[fol. 89] By Mr. Kilbourne: Your Honor, I realize that we haven't started getting to the facts of the case, and it looks like we might be a long time doing it, but I am going to have to try to persist in doing it to show the intent.

By the Court: The Court will overrule the objection.

By Mr. Bell: To which ruling of the Court we respectfully except, and ask that a formal Bill be reserved, making the question, the answer and argument of counsel to be a part of the formal Bill.

By Mr. Kilbourne: Will you read the question now?

The Reporter Read the Question.

A. For the same reasons that have been stated before, I refuse to answer that question on the grounds of the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

By Mr. Kilbourne: Your Honor, I certainly ask that the witness be instructed to answer the question.

By Mr. Elie: Your Honor, we object to the same thing. I think it's becoming more and more obvious why it becomes necessary to grant witnesses immunity. It is impossible [fol. 90] for the witness to know just what questions she may answer that will tend to incriminate her. This is the third question that she has refused to answer on her constitutional grounds, and the Court found that in one instance she was correct—

By the Court: I didn't say she was correct, I said I would have to go along with her.

By Mr. Elie: The Court sustained the objection of counsel which means that every time the question is raised, the Court is then and there ruled that it will not tend to incriminate the witness. I think it would make for a much smoother hearing if the Court granted immunity.

By the Court: The Court can not, and will not grant anyone immunity. Immunity is for a special group of people under special circumstances, and certainly I can't see that the witness fits that. I think in this case that the question and the answer very definitely could not incriminate her. Really the question is based so that it has no right to hurt.

By Mr. Bell: With all due respect to the Court, I think [fol. 91] the question asked whether or not other attempts were made to go to other buildings, other than the Audubon Regional Library here—what it appears to me, with all due fairness to the Court, the question presupposes that this witness has some peculiar knowledge that a plan existed that involved Negroes, or other parties, going to all 3 buildings, as suggested by the District Attorney, simultaneously. It presupposes that she has knowledge of the plan, without any plan being charged in the Bill of Indictment, and persons have already been arrested for criminal conduct involving one of these libraries. Apparently the State is trying to elicit information that presupposes the existence of a conspiracy to violate the Law, as written by our Legislature. It appears to me that certainly if this witness has

any specialized knowledge, she would be subjecting herself and others to criminal charges on which she has already invoked the Fifth Amendment, which she has a right to do under the Constitution of this country, and I don't think there should be any doubt that she has a right to refuse to answer any questions, based on the grounds that it might [fol. 92] tend to incriminate her. I think it is quite obvious from the quest itself that the question presupposes the existence of a criminal conspiracy. If the conduct on which these persons have been charged is deemed to be permanent, which it has been by the State.

By the Court: Do you re-urge your question?

By Mr. Kilbourne: I do, Your Honor.

By the Court: I will ask you to answer the question if you know the answer.

By Mr. Bell: If the Honorable Judge orders the witness to answer the question over the objection of counsel, and over the interjection of the Fifth Amendment plea by the witness, we would like to respectfully urge a Bill of Exception, making the question as propounded by the District Attorney, the answer of the witness, the objection and argument of counsel along with the ruling of the Court, all a part of the formal Bill of Exception.

A. I would like for permission to speak with my counsel.

By the Court: Mr. Kilbourne, do you have any objection to the witness talking to her attorney?

[fol. 93] By Mr. Kilbourne: No, Your Honor. By now, Your Honor, I think it must be evident to everyone and certainly to the Court that this witness is a hostile witness, and from here on I would ask permission of the Court to ask her leading questions. I don't have any objection for a recess while she confers with her counsel.

By the Court: Sheriff, let's take a 10 minute recess.

10 Minute Recess.

Court Convened.

By Mr. Kilbourne: I would like, Your Honor, for the record to show who the witness' lawyers are.

By Mr. Bell: Your Honor, I don't think it's proper to let the record show who the witness conferred with as her counsel, I don't see where it has any bearing on the case, whatever; it might tend to cloud the situation a little bit, but I don't see where it has any bearing at all on the case.

By the Court: Well, I left the court room, and I don't know.

By the Court:

Q. You are not ashamed to say who your lawyers are, are you?

[fol. 94] A. Well, I have to agree with counsel saying that as a witness, I don't technically have lawyers that I conferred with. If they were asked if they wanted their names put in the record, I guess it's up to them to say whether they want to have their names in or not.

By Mr. Kilbourne: Your Honor, the State is alleging that this witness is a host le witness, and I think the record should show that she asked permission to confer with her lawyers, and I think the record should show that her lawyers are also the attorneys for these defendants.

By Mr. Elie: Your Honor, Mr. Kilbourne has repeated that this is a hostile witness, I don't believe there is any evidence to indicate that she is a hostile witness; all she says, the questions that she thinks will incriminate her, she refuses to answer. This is not because she is maybe a hostile witness.

By the Court: Well, of course, ethically there may even be a conflict of interest here. I think the record now properly shows who the lawyers are; I think, in fact, that the only lawyers in the court room at this time are the District Attorney and two lawyers for the defendants.

[fol. 95] By Mr. Bell: Well, I don't want to make an issue of it. It's just that I thought, Your Honor, that the fact that we are representing the 5 defendants in the case, and we got the first witness, then to have it go into the record that the witness is our client, without anything else to show that—if the District Attorney wants to pursue the fact that this

witness is hostile, and wants to cross-examine her, or something like that, it might be pertinent to prove that fact; but I think until I take the stand, or the witness testifies as to our client-attorney relationship, I don't think it's proper for the record, just on the motion of the District Attorney, to show that we are defending her, because this witness has never been charged with anything, and she doesn't have a lawyer in this matter. She conferred with us, that is true, and I am going to admit that, but I think the mere fact that she conferred with us on a matter that may be referring to her, should not warrant the insertion in this record of the fact that we also represent the witness in this case, unless there is some point in the District Attorney's trying to [fol. 96] prove something.

By Mr. Kilbourne: If Your Honor please, the witness has refused to answer a question, and when the Court ordered her to answer it, she asked that she be allowed to confer with her attorneys, and the Court granted her a 10-minute recess for her to be able to confer with her attorneys. The record already shows that, that's already in the record, and I merely want the record to show who it was that she conferred with.

By the Court: I think the record shows that.

By Mr. Kilbourne: I guess it does.

By the Court: Are you satisfied?

By Mr. Kilbourne: Well, I guess so.

By the Court: We don't know if the attorneys represent her, or if she retained them, but she conferred with them, and that was what the Court granted a recess for.

By Mr. Kilbourne: All right, Your Honor, that's all right. I just ask now that she answer the question.

A. Would you repeat the question?

The Reporter Read the Question.

A. Could you tell me what you mean by, "other branches?"

Q. Yes, the branch at St. Francisville, and the branch at [fol. 97] St. Helena.

A. Are you asking me if there were other attempts to enter them?

Q. The same date as the offense charged against these defendants?

A. Yes, there were.

Q. Was that by members of the Congress of Racial Equality?

A. Well, I am going to refuse to answer that for the same reasons I stated before.

By Mr. Kilbourne: I ask that the witness be instructed to answer the question, Your Honor.

By the Court: The Court will so order you to answer the question if you know that they are members.

By Mr. Bell: Of course, Your Honor, I want to interpose an objection on that on the grounds that the question as to what organization the persons who attempted to enter other branches of the Audubon Regional Library besides the Clinton Branch, is irrelevant and immaterial.

By the Court: The Court will overrule the objection.

By Mr. Bell: I would like to reserve a formal Bill of Exceptions, making the question, the objection of counsel, and [fol. 98] the ruling of the Court all part of the formal Bill of Exceptions. We would also like to except to the Court instructing the witness to answer that question, as the witness has interposed the Fifth Amendment.

By Mr. Kilbourne: I would like to ask the Court to ask counsel if he is making that objection as counsel for the witness, or as counsel for the defendants.

By the Court: I believe the witness has a personal right to that, and she has invoked the Fifth Amendment; the Court gives no weight to it.

By Mr. Bell: I will withdraw the objection to the ruling of the Court requiring the witness to answer. I think the objection and the interposition of the Fifth Amendment by the witness is sufficient on the record to take care of itself.

The Reporter Read the Question.

A. I don't know.

Q. Since you objected to answering that question, since you didn't know whether they were or not, why didn't you answer it in the first place?

By Mr. Elie: If Your Honor please, he has his answer and now he isn't satisfied with the answer, I don't think he can [fol. 99] argue with the witness.

By the Court: I think the question is argumentative, Mr. Kilbourne.

By Mr. Kilbourne: Your Honor, I still want the record to show that the witness is hostile.

By the Court: Do you re-urge the question?

By Mr. Kilbourne: I do re-urge the question.

By the Court: Subject to the objection, will you answer the question.

By Mr. Elie: Your Honor, I respectfully reserve a Bill making the request and the Court's ruling to the objection a part thereof.

A. What is the question again?

Q. Since you have answered that you did not know whether the people who entered the other branches were members of the Congress of Racial Equality, why in the first place, did you object to answering the question?

A. Well, I stated my objection that I was pleading the First, Fifth, and Fourteenth Amendment to the Constitution of the United States, and I believe there were also objections raised by counsel for the defendants.

Q. Isn't it a fact that you just didn't want to answer my questions, isn't that it?

[fol. 100] A. (No answer.)

Q. Isn't that the real reason?

A. I don't understand that question.

Q. What is it that you don't understand about it?

A. What do you mean, that I don't want to answer it?

Q. Did you object to answering that question simply because you don't want to answer the question asked you by the prosecuting attorney in this case?

A. I will state again my reasons for not answering the question, and that statement will stay the same.

Q. The part of the program of the Congress of Racial Equality in this community is what is termed, "integration," is that right, "integration of the races?"

A. I would like to know what that has to do with the order at hand?

By Mr. Kilbourne: I ask that the witness be instructed to answer the question, Your Honor.

By the Court: Answer the question if you know.

A. Could you be a little more detailed?

By Mr. Kilbourne: I ask that you instruct the witness to answer the question, Your Honor.

By the Court:

Q. Do you understand the question?

A. Would you repeat the question?

[fol. 101] The Reporter Read the Question.

A. The program of CORE in any community is to try to work towards a society in which all persons can finally live up to the potentials that they were born with, and all persons have equal opportunities to the facilities of the community so that they can develop their potentials.

By the Court: Do you want her to answer your question?

By Mr. Kilbourne: She hasn't answered it, Your Honor, I wanted her to answer the original question.

A. Well, I thought that the answer to your question was involved in the answer that I gave.

By Mr. Kilbourne: Your Honor, the question that I simply asked her was whether the program of CORE in this community was one of integration of the races—termed "integration of the races?"

A. Well, CORE believes as part of CORE's philosophy that the development of potential cannot proceed if people cannot have equal opportunities to develop themselves in a segregated society, and that CORE is dedicated to settle segregation, and work for an integrated society.

By Mr. Kilbourne: That satisfies me.

Q. Did you give an interview, or did you call the newspapers and give them a report in the Morning Advocate on [fol. 102] the evening the defendants were arrested?

A. I really can't remember.

Q. Well, maybe I can refresh your memory a little bit. I would like to read to you from an article in the Sunday Advocate, March 8, 1964: "A spokesman for CORE said earlier that such a demonstration was planned. Mimi Feingold—" are you also known as "Mimi?"

A. That's right.

Q. —"Mimi Feingold, a CORE task-force worker, said that similar groups of Negroes had attempted to enter public libraries in St. Francisville, in West Feliciana Parish, and at Greensburg, in St. Helena Parish, but were locked out." Is that a correct statement of what you told a newspaper reporter?

A. I didn't say that to a newspaper reporter.

Q. Are you quoted erroneously in this newspaper?

A. No, I am not.

Q. That is a correct statement, then, of what I read to you, what you told someone?

A. Yes, it is.

Q. Did you further make the statement that: "The three libraries, or branches of the Audubon Regional Library, are operated by the tri-parish board, and reserved for use by whites only?"

A. I believe I made a statement similar to that.

Q. Where did you get that information?

By Mr. Bell: At this point, Your Honor, I think we are [fol. 103] getting really far afield here. I don't see where she got the information that was quoted in the newspaper is relative to the issue in this case. I would like to interpose an objection on the grounds that it is irrelevant and immaterial, it has nothing to do with the guilt or innocence of the five defendants; as to what this witness has got to say about information related to the character of certain libraries that exist in or out of the Parish.

By Mr. Kilbourne: Your Honor, I am still trying to get to the intent with which these defendants entered in the library. It has already been characterized in the newspapers by this witness here as a demonstration, and that is the purpose of the question. She said, "it was reserved for use by whites only." I think I should be allowed to find out where she got that information.

By the Court: The Court overrules the objection.

By Mr. Bell: Your Honor, I would like to reserve a Bill, and ask that the question, the answer, argument of counsel, [fol. 104] and ruling of the Court all be made a part of the formal Bill.

Q. Answer the question.

A. Well, I really can't remember because our information comes from many different sources.

Q. Do you know of some colored person who has been refused service at the library?

A. I know five such persons.

Q. Who?

A. Five such persons.

Q. Who are they?

A. The five defendants.

Q. Is it your testimony here today that they were refused service at the library on the day they were arrested?

By Mr. Bell: Your Honor, I am going to object to the District Attorney asking that question unless she has personal knowledge, that she was present at the time that these people were arrested, and that she would know whether or not they were refused service, or what happened. Unless it was shown that she was in that neighborhood, in that vicinity and a witness—

By the Court: I think the objection is probably good, but she has already said that she knew the five defendants who [fol. 105] were arrested.

By Mr. Bell: What I am saying, Your Honor, I think the evidence in part is hearsay and it is not competent.

By the Court: Suppose you lay a little more foundation, Mr. Kilbourne, and find out if she was in a position to know, and if she got the information through hearsay.

By Mr. Kilbourne: Your Honor, I asked her the question if she knew someone that had been refused service, and she said she knew five, and before I could pursue the matter any further I was interrupted by an objection.

By the Court: The Court will overrule the objection.

By Mr. Bell: Your Honor, I would like to reserve a formal Bill of Exception and ask that the question, the argument of counsel, and the ruling of the Court all be made a part of the formal Bill.

Q. You don't know of your own knowledge of any colored person who was refused service at the library, is that correct?

A. That's right.

Q. In the article in the newspaper which you stated is substantially correct, you, as a CORE spokesman said: [fol. 106] "such a demonstration was planned—" what was meant by "demonstration?"

A. Is the CORE spokesman identified?

Q. No.

By Mr. Elie: If Your Honor pleases, since the District Attorney is reading from a newspaper, I am going to have to request that the witness be permitted to see the whole of her statement.

By Mr. Kilbourne: I will be glad to let the witness see the statement.

A. (The witness looked at the statement.)

Q. Will you answer the question? Are you denying that you are the spokesman referred to in that newspaper article?

A. I really don't know; I couldn't say whether I am or not.

Q. Suppose you were the spokesman for that article, will you please tell the Court what you meant by that word, "demonstration?"

By Mr. Elie: Your Honor, I don't see how she can be considered competent to answer the question.

By the Court: I think the objection is good and I will sustain it.

Q. How long have you been a member of CORE?

A. I can't remember exactly, for several years.

Q. In connection with your work as a member of CORE, haven't you, yourself, engaged in frequent demonstrations?

[fol. 107] A. I don't see what that question has to do with this case.

By the Court: You don't want to argue with Mr. Kilbourne.

By Mr. Kilbourne: Your Honor, I ask that the witness be instructed to answer my question.

By the Court: Answer the District Attorney's question.

A. Could you define what you mean by "demonstrations?"

Q. All right, I ask you this: Were you not arrested in Camden, Maryland, in connection with an attempt to integrate a swimming pool, I think in 1962?

A. No, I was not.

Q. Where were you arrested?

By Mr. Elie: Objection, Your Honor, he has not proved that she was ever arrested, and now he is asking where she was arrested. The witness said she has not been arrested, and again he is assuming a fact that has never been proven.

Q. Well, I will ask you this: Have you even been arrested?

By Mr. Elie: Objection again, Your Honor, is the District Attorney attempting to impeach his own witness; there is no relevancy to this case.

By Mr. Kilbourne: Your Honor, I am getting around to try to prove what a "demonstration" is now.

[fol. 108] By the Court: Why don't you rephrase your question to "convicted?"

Q. Have you ever been convicted of taking part in any

demonstrations as a member of the Congress of Racial Equality?

A. (No answer.)

By Mr. Bell: We hate to state this objection because we don't want to delay proceeding unduly, but is the District Attorney attempting to impeach his witness, that's what we are trying to find out?

By the Court: The District Attorney had earlier asked the Court to recognize the witness as a hostile witness.

By Mr. Bell: Didn't the Court rule on that? That's what we are trying to find out, if she is a hostile witness. I mean, if she has already been ruled a hostile witness, prior convictions have nothing to do with—

By the Court: I believe that Mr. Kilbourne has said that he is trying to get a definition of what a "demonstration" is in CORE lingo. She said she didn't make the statement to the newspapers, so I sustained your objection on that.

By Mr. Bell: Again I submit, Your Honor, that we might [fol. 109] get a more reliable source, like a dictionary, or an expert on English, or something. I don't think we can qualify this witness as an expert on the English language.

By Mr. Elie: Judge, I just cannot see the relevancy of it. The State is trying to prove that a lot of people are attempting to disturb the peace, and whether the witness is convicted for murder, I don't see that it has anything to do with this case, what does it have to do with the attempt? If she committed murder, that has nothing to do with the attempt.

By the Court: It's now 5:00 o'clock, and I can see us either spending the night or coming back.

By Mr. Elie: I would like to get this over with today if possible, Judge.

By Mr. Kilbourne: Your Honor, I can see that we are going to be here quite a long time with this witness because every time I try to ask her a question, she pretends that she doesn't even know what a "demonstration" is, and she has been a member of the Congress of Racial Equality for

nearly 2 years; so I am going to have to take her over and [fol. 110] over until she finally decides to answer these simple questions.

By the Court: Suppose we adjourn until April 9, 1964, at 9:00 A.M.

By Mr. Elie: Your Honor, I would like to ask the Court if possible, because we have been late for Court on several occasions, to open Court at 10:00 instead of 9:00, as it makes it a little hard to get here from New Orleans for 9:00.

By the Court: Court adjourned until 10:00 A.M., April 9, 1964.

[fol. 111]

Court Convened at 10:00 A.M., April 9, 1964.

By the Court: In the case of "State of Louisiana vs Henry Brown, et al," is counsel present?

By Mr. Kilbourne: Plaintiff is present and ready to proceed.

By Mr. Bell: Defendants are ready, Your Honor, Robert F. Collins, and Murphy Bell are representing the defendants today, Your Honor.

By Mr. Kilbourne: I wish to call Miriam Feingold to the stand.

By the Court: You have already been sworn, you remain under oath for the remainder of the case.

Direct examination.

By Mr. Kilbourne:

Q. Was there any particular reason for these defendants going to the Library on a Saturday morning?

A. You mean on a Saturday as opposed to any other day?

Q. Yes?

A. No, I don't.

Q. Was there any advance notice given any public officials or law enforcement officials that this entry of the

Library by the defendants was going to be made on the day it was made?

By Mr. Bell: We object, Your Honor.

[fol. 112] By Mr. Collins: This line of questioning presupposes that this witness is the spokesman for, and knows all about what was involved in this particular incident; therefore, we object on the basis that no proper foundation has been laid.

By the Court: I believe the question was, "did she know?"

By Mr. Kilbourne: I believe the foundation was laid the last time the case was heard at which time this particular counsel wasn't present.

By the Court: The Court overrules the objection.

A. No, I don't know of any.

Q. Do you know who notified the Federal Bureau of Investigation that this entry was going to be made in the Library?

By Mr. Bell: Your Honor, I don't want to belabor with too many objections, but there is nothing in the record to show that the F. B. I. was notified, so I don't think that is a proper question. If the record would show that the F. B. I. was notified, then this maybe would be an answerable question.

By Mr. Kilbourne: Your Honor, he is requiring me to put my evidence on in a certain method, and I don't think [fol. 113] the State requires me to do that, I don't think it requires it in any particular order.

By the Court: The Court overrules the objection.

A. I honestly can't remember who notified them.

Q. I take it from your answers that you know that the Federal Bureau of Investigation was notified?

A. Well, I can't be sure of that, I really can't remember.

Q. Is your answer that you don't know, or that you can't remember?

A. I can't remember.

OFFER IN EVIDENCE

By Mr. Kilbourne: If Your Honor please, in connection with the witness' testimony, the State wishes to offer, produce and file into evidence page 2-A of the Baton Rouge Sunday Advocate of March 8, 1964, and with particular reference to the article: "Clinton Library sit-in nets 5 arrests," to be identified as "State #1."

By Mr. Bell: Your Honor, of course we are going to object on the ground, first, that it's not relevant; second, that I don't think this particular article is anything more than hearsay, it doesn't identify who wrote it; and third, it just has no relevancy to the guilt or innocence of the [fol. 114] accused. I don't see what this line of questioning is going to do.

By the Court: I think we probably have covered that previously, but since your objection I will reserve a ruling on it until he lays more foundation.

By Mr. Bell: Of course, I would like to further call to the Court's attention the fact that this witness has never identified this particular article—

By the Court: The Court has already ruled. The Court reserves its ruling subject to further foundation by the State.

By Mr. Kilbourne: If Your Honor please, my recollection is that the witness testified the last time we were in Court that the article was substantially correct, that it was a representation of her interview with a reporter of the Baton Rouge paper.

By the Court: I think substantially that was correct, but since counsel is again objecting, I suggest that you go back and re-lay your foundation on it.

By Mr. Kilbourne: If Your Honor please, I am satisfied with what is in the record. If I am wrong, the Court can [fol. 115] throw it out, but it takes so much time to get this witness to answer a question, I just don't like to waste any more time trying to get her to answer it; I think she has answered it.

By the Court: I reserved a ruling because I thought she had identified the report except for several words in it, and said it was substantially what she had related. I don't know exactly, but according to my notes here—I am trying to remember what did happen. If the State is satisfied—

By Mr. Kilbourne: I am satisfied, Your Honor, without belaboring the matter further, and I tender the witness.

By Mr. Bell: We would like to take a Bill of Exceptions, marking part of the Bill of Exception, the State's introduction marked "State #1," and the testimony of the witness, and ask that it all be made a part of the Bill of Exception.

By the Court: You are asking for the testimony previous to this, or the record?

By Mr. Bell: The record, and the statement be made a part of the Bill of Exception.

[fol. 116] By the Court: Let the offering then be received, filed and identified as "State #1."

By Mr. Bell: No questions, Your Honor.

By Mr. Kilbourne: I call Mrs. Reeves to the stand, please.

[fol. 117] The witness, Mrs. Katie Reeves, after first having been duly sworn to tell the truth, the whole truth, and nothing but the truth, so help her God, testified as follows:

Direct examination.

By Mr. Kilbourne:

Q. Will you state your name for the record, please?
A. Katie Reeves.
Q. K-a-t-i-e?
A. Yes.
Q. R-e-e-v-e-s?
A. Yes.
Q. Mrs. Reeves, what is your occupation? I know you are a housewife, but what else do you do?

A. I am Branch Assistant at the Audubon Regional Library.

Q. In that capacity, what are your duties?

A. To assist people who come into the Library to select their books; check out the books to them; to keep the shelves in order, and to keep a record of the circulation of the day.

Q. This is a case of the State of Louisiana prosecuting Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie for disturbing the peace on the 7th of March, 1964, in regard to an incident at the Library. I first ask you this question: Do you know any of these defendants?

A. Only one, Henry Brown.

Q. Do you see Henry Brown in Court?

A. Yes, right there (indicating).

Q. Stand up please (to Henry Brown). Is that Henry Brown?

A. Yes, sir..

[fol. 118] Q. Do you know any of the other defendants?

A. No, sir, I can't identify any of them.

Q. Have you seen any of the other defendants before?

A. Not that I know of.

Q. Will you relate to the Court what happened on the morning of the 7th of March, which was a Saturday, that resulted in this charge?

A. Yes. These 4 came to the Library.

Q. How many?

A. Four and Henry Brown, 5 altogether. I met them between the tables, and I asked if I could help. He gave me the name of a book that he wanted; I checked the card catalogue to see if we had the book, but we did not have the book, so I told him we would have to ask the State Library for the book, and he would be notified when we received the book from the State, and he could either pick it up or it would be mailed to him, that it would be Monday or Tuesday.

Q. What happened then?

A. Since we did not have the book I had assumed that they would leave, they did not. I repeated what I had said, and then I asked them to leave, they did not; so then I called Mrs. Perkins and she came in and said essentially the same thing, and also asked them to leave.

Q. Did they leave?

A. No, sir, they did not.

Q. What did they say, if anything, or did any of them say anything when they were asked to leave?

[fol. 119] A. No, sir, I don't think so.

Q. Did anyone ask for a book besides Henry Brown?

A. No, sir.

Q. Will you describe the commotion in the Library when these defendants came in—just describe it as best you can?

A. As you enter the door to the left are bookshelves, a table, and a card catalogue; straight ahead of you is the stove; to your right is a table and bookshelves, and a desk and chair.

Q. Does that open on to the street?

A. Yes, sir.

Q. On to the sidewalk?

A. Yes, sir, on to the sidewalk.

Q. That building is located where, Mrs. Reeves?

A. Across the street from the Court House.

Q. That is on the north side of the Court House?

A. Yes, sir.

Q. When the defendants were asked to leave, you already testified that they didn't say anything, did they do anything?

A. No, they just sat there, at least Henry Brown sat, the others were standing. He sat down when I went to the card catalogue to check to see if we had the book.

Q. About what time of day was it, Mrs. Reeves?

A. I would say around 20 minutes to 12:00, at least 11:30 or a quarter to 12:00.

Q. Were you alone in the room at the time?

A. Yes, sir.

[fol. 120] By Mr. Kilbourne: I tender the witness.

Cross examination.

By Mr. Bell:

XQ. Mrs. Reeves, what is the name of the book that one of the accused asked for?

A. I copied it from the paper he handed me, "Wendall Arna, the Story of the Negro: Bontems."

XQ. Did he not ask for another book later on?

A. I don't think so.

XQ. Do you recall one of the accused asking for the Story of the Constitution, a book on the United States Constitution?

A. He did not ask me for it.

XQ. Were you present when he asked someone else for it?

A. He did not exactly ask for it.

XQ. There was some conversation regarding the book on the Constitution, is that not correct?

A. Yes, sir, he said, "How about the Constitution?"

XQ. But he did not ask you that directly?

A. He did not ask me.

XQ. I think you testified on direct that no one said anything, other than the accused, that is what you were talking about?

A. That's right, he was the one doing the talking.

XQ. Was there any noise or boisterous talking?

A. No.

XQ. Everybody was seated?

A. Henry Brown was seated, the others were standing.

[fol. 121] XQ. Can you identify any of the other accused?

A. I don't think I can.

XQ. The only one you can identify is Henry Brown?

A. Yes, Henry Brown.

XQ. How many times did you ask all of the accused to leave?

A. Twice.

XQ. Did you address just Henry Brown, or did you address all 5 of them?

A. They were all together, I assumed that I was addressing all of them, I did not call anyone by name.

XQ. But you merely directed your words to the person you was talking to, which was Henry Brown, is that correct?

A. I was talking to him in connection with the book that he had ordered, my other conversation was in reference to all of them as I did not know any names.

XQ. Mrs. Reeves, did you mention anything to Henry Brown about a policy or regulation of the Audubon Regional Library?

A. I think I said that his point of service was a bookmobile or it could be mailed to him.

XQ. Can you explain that, Mrs. Reeves? What do you mean by, "point of service"?

A. He could pick up his book at the bookmobile, or he could have it mailed to him.

XQ. By that you meant that he could not be served in the Library itself?

A. He could pick it up, yes, he probably would have that day had we had the book.

[fol. 122] XQ. Did you not mention to him that the rules of the Library prohibited him from being served at this particular point of service?

A. I did not.

XQ. You did not do that?

A. No, I did not.

XQ. Did you suggest to him that he could get his book from the bookmobile rather than at this particular Library?

A. He could not have gotten this particular book from the bookmobile because we do not have the book for which he asked.

XQ. I understand that. And he did not request the book on the Constitution from you so you don't know anything about that?

A. No.

XQ. Did you ever send this particular book to Henry Brown?

A. I did not, when we do not have the book, I take the request on a slip of paper and then I give it to someone else and they check it out; and when it comes in, it is mailed or they are notified.

XQ. But you did take this order?

A. I did take this order and process it as usual.

XQ. Is that the usual procedure, if a person makes a request to you directly, that you would mail the book out to them, or you would have them pick it up; what is the usual procedure?

A. That they would pick it up, or we would mail it, either way.

XQ. In the absence of any directions, do you usually mail the book, or would you request that they pick it up?

A. (No answer.)

[fol. 123] XQ. The reason I am asking that question, Mrs. Reeves, is because I believe we have a book here that was mailed to Henry Brown from the Audubon Regional Library, and I don't know whether or not this was mailed. I ask you to identify this book and ask you whether this book came through your Library?

A. (Witness looked at the book) I cannot say, I do nothing with the book after I take the request until they are handed to me.

XQ. Do you remember mailing this card?

A. I do not.

XQ. Have you seen that card before?

A. I have not.

By Mr. Bell: Thank you, Mrs. Reeves.

Re-direct examination.

By Mr. Kilbourne:

Q. Mrs. Reeves, I wanted to ask you about this book again, what was the title of this book? Before I ask you that, did he hand you a slip of paper with the book written on it?

A. Yes, he did.

Q. Did he say, "I would like to get this book"?

A. He said, "I would like to get this book," and he handed me a slip of paper.

Q. What was the name of that book again?

A. Wendall Arna.

Q. Would you spell that, please, ma'am?

A. W-e-n-d-a-l-l.

[fol. 124] Q. What was the other word?

A. A-r-n-a, The Story of the Negro: Bontems.

Q. Had you ever heard of that book before?

A. I never had.

Q. Do you know whether or not there is such a book?

A. We did not show it in the card catalogue—that would be my way of seeing if we owned the book.

Q. The card catalogue, what does that show, the books that you actually have in the Library, or the ones that are available?

A. The ones that are available in this region.

Q. When they came in, was the door shut to the Library?

A. Yes.

Q. Does the Library have a screen-door, and then a wooden-door in front of it?

A. Yes.

Q. Both of those, the screen-door and the wooden-door was shut?

A. Yes.

Q. Is that the usual practice?

A. Yes, sir, especially if it was cool, or hot if it was hot because the air-conditioners regulate it.

Q. It would be your testimony that ordinarily both were closed?

A. Yes, ordinarily both were closed.

Q. Describe as best you can, how the defendants came in, were they in the same order, were they right together; who came in first?

A. I can't say because they all seemed to come in at one time, as a group.

[fol. 125] Q. They came in as a group?
A. Yes, sir.

By Mr. Kilbourne: If Your Honor please, I would ask that all of the defendants stand up.

The Defendants Stood Up.

Q. Can you identify any of them, other than the one you have already identified?
A. I don't think so.

By Mr. Kilbourne: That's all I have, thank you, Mrs. Reeves.

Re-cross examination.

By Mr. Bell:

XQ. Mrs. Reeves, you said you have a table in this Library with some chairs?
A. Two tables.
XQ. What are these tables used for?
A. Book-display and magazines.
XQ. Isn't it the policy of the Library to allow the public to read in the Library if they care to?
A. I suppose so, but not many people do.
XQ. But they normally would use these tables and chairs to read if they cared to do so quietly?
A. I suppose so.
XQ. I mean as far as you know, there is no rule against a citizen reading a book in the Library if a citizen cared to? Assuming that the Library had the book a citizen wanted?
[fol. 126] A. I suppose they would, very few people read; if a book is there and they want it, they take it and go.
XQ. What type of books do they have in the Library that's available for the public to take out: I would like to rephrase that question: Do you have any reference books that are not available to a citizen to take from the Library, you have to use it right at the Library?
A. Yes.

XQ. You have books like that?

A. Yes, we do.

XQ. Normally, if a person wanted to see one of those books they would have to look at it and get what information they wanted inside the Library?

A. I assume you are talking about reference books, we take requests by phone, and we give information citing the source.

By Mr. Bell: Thank you, Mrs. Reeves.

Re-direct examination.

By Mr. Kilbourne:

Q. Mrs. Reeves, did any of these defendants indicate any desire for any reference book, or anything of that kind?

A. No, sir.

Q. Did they indicate a desire to read anything in the Library?

A. No, sir.

By Mr. Kilbourne: That's all.

By the Court:

Q. Mrs. Reeves, how old is the Library, do you know?

A. I really couldn't say definitely, I would think since [fol. 127] 1961, but I couldn't say definitely because I don't know.

By the Court: That's all.

Witness Excused.

By Mr. Kilbourne: I call Mrs. Marshall Perkins.

[fol. 128] The witness, Mrs. MARSHALL PERKINS, after first having been duly sworn to tell the truth, the whole truth, and nothing but the truth, so help her God, testified as follows:

Direct examination.

By Mr. Kilbourne:

Q. Will you state your name for the record, please?

A. Mrs. Marshall Perkins.

Q. What is your connection with Audubon Regional Library?

A. I am Regional Librarian.

Q. Tell the Court what the Regional Library is? What does it consist of?

A. The Audubon Regional Library is a library operated jointly by 2 Parishes, its points of service are 3 branches and 2 bookmobiles.

Q. Is there a main Library, or main facility?

A. There is no main Library as such, there is a headquarters maintained at Clinton. The headquarters is not located in the branch, it is located behind the branch and is not open to the public.

Q. What portion of the headquarters is open to the public?

A. The portion that is open to the public is the room in which you enter from the street on the west side, and there is a children's room open to the public, and a small room which maintains magazines. We do not maintain a reading-room, as such, we do not have the space for it.

Q. Mrs. Perkins, were you present on the 7th of March, I believe it was, when the incident occurred which resulted [fol. 129] in the charges we are prosecuting against the defendants present in the court room today?

A. I was not present in the room at the time they entered, no, I was in my office at the time.

Q. What first attracted your attention to the situation?

A. Mrs. Reeves came in and told me that she had asked the people to leave, and they had not done so.

Q. So then what did you do?

A. I went out to talk to them myself.

Q. Did you know any of them?

A. Not before that time, no.

Q. Do I understand your answer to be that you had never seen any of the defendants before?

A. That's right.

Q. To your knowledge had they ever made any requests for any books in the Library before?

A. I would not necessarily be in a position to know this, I do not handle all of the books if they can be filled within the Regional; I only answer those requests that we do not own, and I decide whether we will purchase the book, or whether we will try to borrow the book from the State Library, or from L.S.U., or from Tulane.

Q. When you went into the—I will call it for convenience sake the lobby—

A. It's adult reading-room, the adult service-room.

Q. You are talking about the same room I call the lobby?

A. Yes.

[fol. 130] Q. When you went into the room, what did you see?

A. I saw the 5 people and Mrs. Reeves.

Q. What were the 5 people doing?

A. One of the 5 people were seated, and the others were standing.

Q. What did you say to them, if anything?

A. I said that I understood that Mrs. Reeves had asked them to leave, and she had given me the request, and I didn't know whether they had misunderstood about me having taken the request.

Q. When you asked them that, did anyone say anything?

A. I asked if he had asked for the book before, I believe the question was.

Q. Who did you address that to, Mrs. Perkins?

A. To Henry Brown.

Q. What was his answer?

A. He said no, he hadn't. Excuse me, he said he had asked for it at the Blue Bookmobile.

Q. Had you ever heard of the book before?

A. Not this particular book, no.

Q. I understand that the book was sent to Henry Brown?

A. That is correct.

Q. Was that the book that he asked for?

A. We assumed that it was, the report we got from the State Library was that the book that he wanted was a book by Arna Bontemps, which was called, "The Story of the Negro."

Q. That wasn't exactly the book that he asked for?

[fol. 131] A. No, it was not, I have that request if you would like to see it?

Q. I would like to see it, please, ma'am.

A. This is the way we take them (handing the request to Mr. Kilbourne).

Q. As I understand it, this isn't the one that he gave you?

A. No, it isn't, he retained that slip. Usually people who ask for books want their information back.

Q. The book that he actually asked for, were you able to locate it at all?

A. No, sir.

Q. What transpired then after the incident that you have already related?

A. What do you mean?

Q. Did something come up about the Constitution?

A. Yes, something came up about the Constitution, but not what I would call a request.

Q. What came up?

A. What was said was this: Henry Brown said, "what about the Constitution?" I assumed that he meant did we have it in the Library, on the heels of the other. I said, "we own copies of it, yes," but he did not request the Constitution.

Q. Did any of the other defendants say anything to you?

A. No, sir.

Q. Did they say anything to anyone, did they speak to the best of your recollection?

A. I have no recollection of that.

[fol. 132] Q. Did you ask them to leave?

A. Yes, sir.

Q. I know you can't remember the exact words, but do you remember what you said to them?

A. The gist of it was they had been asked to leave by Mrs. Reeves; Mrs. Reeves is in charge of the Branch, and they did not comply with her request. I also asked them to leave, saying that the one who seemed to want something had been served.

Q. What did they do then?

A. Nothing.

Q. Did they leave?

A. No, sir.

Q. Did they say anything about them not going to leave?

A. I don't think they did at that point.

Q. At any time, was anything said to that effect?

A. After the Deputies came to the Library, there was something said, yes.

Q. What was that?

By Mr. Bell: Your Honor, I don't think the witness can testify to hearsay.

By Mr. Kilbourne: According to the Res Gestae, Your Honor.

By the Court: Lay a little more foundation.

Q. What we are talking about, did it all take place in the Library within a short time, and were these defendants all [fol. 133] present?

A. Please?

Q. You mentioned when the deputies got there, were they still there?

A. Oh, yes.

By Mr. Bell: I was trying to find out, Your Honor, if the witness has identified all of the accused. I am not quite sure that she identified all of them.

By Mr. Kilbourne: Will the 5 defendants stand up again?

The Defendants Stood Up.

Q. Can you identify the 5 defendants, Mrs. Perkins?

A. You mean, can I identify them by name?

Q. I don't suppose you know the name of them?

A. I don't, no, sir.

Q. You recognized them as being the same people who were over at the Library?

A. Yes, I can be sure about the first, the third, the fourth, and the fifth, in order from this end. I cannot be certain about the second.

Q. There were 5 colored males there?

A. Yes, sir, that is correct.

By Mr. Bell: Your Honor, in view of the fact that she could not identify all 5 of them, I would still submit that the testimony as to hearsay under the Res Gestae Rule would [fol. 134] not be permissable at this point.

By the Court: The Court overrules the objection.

Q. What was said by the defendants, or by any of them, during the time the Sheriff or the Deputies were there?

A. I think what they said was—what Henry Brown said was, that he was not going to leave the Library, substantially that was it.

Q. Approximately how long had these defendants been there before the arrival at the Library of the Officers?

A. I don't really know, it could have been 10 or 15 minutes.

Q. Did you call the Sheriff yourself?

A. No, I did not.

Q. Did someone call from the Library?

A. No, sir, I started to, I had asked for a telephone book.

By Mr. Kilbourne: I tender the witness.

Cross examination.

By Mr. Collins:

XQ. Mrs. Perkins, isn't it a fact that it is Parish policy that Negroes not be served at the Audubon Regional Library?

A. That is not correct.

XQ. Isn't it a matter of fact that you told the 5 defendants in this case on the occasion on which they were arrested that they could not be served at the Audubon Regional Library?

A. They were served.

[fol. 135] XQ. They were served?

A. They were served. Any time you do not have a book, you cannot give it to the person; you take the request and you do your best to get the person the book, that's the policy at the Audubon Regional.

XQ. Isn't is a fact that the defendant, Henry Brown, asked you for a book on the Constitution of the United States?

A. He did not ask me for a book on the Constitution of the United States.

XQ. Didn't you previously testify that he asked you about the Constitution?

A. He said to me, "what about the Constitution?"

XQ. To which your reply was?

A. That we owned it, that we owned a copy, that we owned several copies.

XQ. Isn't it a fact that at that point that you could not serve him from the Library?

A. I did not.

XQ. You have reference books in this library, isn't that correct, Mrs. Perkins?

A. A few.

XQ. In order to use these reference books, isn't is a fact that you have to use them on the premises?

A. Sometimes we loan out reference books, yes.

XQ. Isn't it a fact that you also have tables present in this room that has been referred to variously as a library, as the adult reading room, and by various other names?

[fol. 136] A. We have tables there, yes.

XQ. Isn't it a fact that the tables in the library is used for the reference books, by persons sitting at the tables in this particular room?

A. On occasion they have, yes, but not sitting in that particular room, there is only one chair in there.

XQ. Where does a person usually sit?

A. Where?

XQ. Could not an individual who wanted to use the reference books sit in the room on that particular chair that you are talking about, at the table?

A. If you are going to use reference sets as such, the information that you are wanting is usually brief, and therefore you could read in reference books like the Encyclopedias, World Almanac, and things like that; and these are factual, brief things, they do not take extensive reading.

XQ. Do you have the Encyclopedia Britannica?

A. I don't think we have it in the branch here.

XQ. Do you have any Encyclopedias in the branch?

A. Yes.

XQ. Which Encyclopedias do you have?

A. I believe we have the Americana here.

XQ. Isn't is a fact that if a person wanted to copy information from one of these reference books, they might find it necessary to sit down to take notes from that reference book, and that sort of thing?

A. I suppose so.

[fol. 137] XQ. And I presume that you do provide the facility of the table and chair for that purpose, is that not correct?

A. Not necessarily.

XQ. In other words, it could be used for that purpose?

A. You could stand there at one of the tables and write the information down, but not many people could be accommodated to sit down because there is only one chair, and the bulk of those 2 tables is used for display.

XQ. Mrs. Perkins, what 3 Parishes does the Audubon Regional Library cover?

A. East Feliciana, St. Helena, and West Feliciana.

XQ. Mrs. Perkins, there are branch libraries in each of the 3 Parishes, are there not?

A. Yes.

XQ. And there are also 2 Bookmobiles, is that correct?

A. That's correct.

XQ. Isn't it a fact that one serves the Negro residents, and one of these Bookmobiles serves the white residents?

A. One of them operates in those areas, yes.

XQ. One operates in the Negro area, and one operates in the white area?

A. In other words, I don't know whether you realize this or not, but the major portion of our schedule is taken up in serving schools, we serve 33 schools in these 3 Parishes with those Bookmobiles.

XQ. I ask that you answer the question. Isn't it a fact that one of these Bookmobiles serve Negro areas, and one [fol. 138] serves white areas?

By Mr. Kilbourne: Your Honor, let me say this, this is cross-examination, I know, but I think we have gone far afield when we get off on Bookmobiles. I think maybe that counsel is now trying a Civil Suit which we filed in the Federal Court, and I don't want to get involved in that this morning; we are only trying this alleged disturbance that took place over at the Audubon Regional Library.

By Mr. Collins: Your Honor, the purpose of this cross-examination is to get at the real facts of exactly what's been going on in reference to using this particular Library, regarding the use of this Library and the policy of this Library.

By the Court: Why don't you ask the witness if she knows of any Negroes that have been refused books there?

By Mr. Collins: Well, Your Honor, on cross-examination, of course, the witness may not be direct in the answer, sometimes you have to approach it other ways to try to get at the point that you are trying to make.

By the Court: That isn't material at all, the only case [fol. 139] here is Disturbing the Peace. I sustain the State's objection.

XQ. At the time of this incident, Mrs. Perkins, do I understand your testimony to be that there was only one chair in this reading room of the library where these people were?

A. Other than the desk-chair, yes.

XQ. Were there any tables in the room at the time?

A. Two.

XQ. Two tables and one chair?

A. Yes.

XQ. And there were open book-shelves in this room?

A. That's right.

XQ. Was it the policy of the Library to permit patrons of the Library to browse among these books?

A. Yes.

XQ. Did these defendants have that same privilege as any other citizens?

A. They didn't use it, they could have.

XQ. Did they have the same privilege as any other citizen?

A. Yes.

XQ. Do they still have the same privilege of going to this Library and browsing among the books, and requesting service in this Library as any other citizen?

A. In what respect?

XQ. Do these defendants, and did they at the time of this incident, have the same privilege as any other citizen in using the books of the Audubon Regional Library in [fol. 140] Clinton, Louisiana?

A. Any book in this Library is available to any citizen of this region who is a resident.

XQ. And any citizen of this region can come into that Library and sit down there as any other citizen, is that correct?

A. Well, not very many can.

XQ. We are talking about individual cases.

A. A single person could, yes.

XQ. And any one of these defendants could, is that correct?

A. If they are registered borrowers of the Library, yes.

XQ. Can they also browse around in this Library?

A. If they were registered to borrow books, yes.

XQ. And in order to register, all you have to do is to go up to the desk and give the Librarian your name?

A. You have to fill out a borrower's card.

XQ. Fill out a card?

A. And it would have to be checked against the other branches of the region to determine if they had a card unless they could produce an I.D. card, an identification card which shows that they are registered by the Audubon

Regional Library. In other words, they could not borrow a book on that day.

XQ. In other words, it's your testimony that there were no racial restrictions, there were none at that time, and there are none now, with references to the use of any of the facilities of the Audubon Regional Library, is that a fact?

By Mr. Kilbourne: I object to that, Your Honor.

[fol. 141] By the Court: Sustain the objection.

By Mr. Collins: Your Honor, counsel for the defendants respectfully reserves a Bill of Exceptions, making the testimony of the witness, and the question part of the record. Your Honor, I don't think that we can get to the heart of the question.

By the Court: I don't understand what you mean by "heart" of it, but we are not trying a race-case, we are trying a Disturbing the Peace case, a simple little misdemeanor case. Let's not belabor it any more, let's get ahead with the case at hand.

XQ. Mrs. Perkins, I show you what purports to be a postcard of the United States Postal Service, postmarked Clinton, March 28, 1964, addressed to Henry Brown, Jackson, Louisiana, which reads as follows: "Memo to Henry Brown from the Audubon Regional Library, Bookmobile #2." "We are mailing to you under separate cover the copy of Arna Bontemps The Story of the Negro. Neither the Audubon or the State Library could verify such a title by Wendall. We hope that this is the book you want. You may return the book either by mail or to the Blue Bookmobile, whichever way is most convenient." Is this card sent by your Audubon Regional Library?

A. We sent such a card, yes.

XQ. And you can identify this?

A. Yes—

[fol. 142]

OFFERS IN EVIDENCE

By Mr. Collins: In connection with the testimony of the witness, I would like to offer, introduce and file in evidence this—

A. —I assume this is the card we sent. We send such notices when the book is not exactly the same title and author as the patron asks, in order to clarify the fact that we are not able to supply such a book—probably there would be such a book, but neither did the Audubon Regional Library's bibliography file show, nor did the State Library's bibliography file show that they had such a title by Wendall; otherwise, had we found the book by Wendall, we would not have sent the card, we would have sent the book.

By Mr. Collins: Your Honor, in connection with the testimony of the witness, I would like to offer, introduce and file into evidence this postcard and ask that it be marked for identification, "Defendants #1."

By the Court: Any objection to the offering? Let it be received, filed in evidence and identified as "Defendants Exhibit #1."

XQ. I show you what purports to be a mailing-jacket with the United States postmark on it, addressed to Henry Brown, Jackson, Louisiana, stamped March 29, 1964, which has the notation: "Library material from the Audubon [fol. 143] Regional Library, Clinton, Louisiana," and I ask you if you can identify this as being the kind of wrapper in which you mail books to the patrons of the Library?

A. The jacket is not exactly the kind that we mail, we mail just whatever we have. In other words, we cannot afford to buy such material; however, the mailing-label is ours, yes.

XQ. Are you in a position to identify this as something that was mailed from the Audubon Library?

A. Yes.

XQ. I show you a book which is entitled: "The Story of the Negro, by Arna Bontemps," published in New York, 1948, and ask you if you know whether or not this book was sent from the Audubon Regional Library to Henry Brown?

A. It was mailed from the Audubon Regional Library, and borrowed from the State Library.

By Mr. Collins: In connection with the witness' testimony, I would like to ask that the mailing-jacket of this book be marked for identification, "Defendants #2," and that it be introduced in evidence; and that the book identified as "The Story of the Negro by Arna Bontemps," be marked for identification as "Defendants #3."

By Mr. Kilbourne: Your Honor, I am going to object to the offering of the book into evidence because the book [fol. 144] belongs to the Library, and I don't think there is any necessity for it, somebody might want to read it, the title is there, it speaks for itself.

By the Court: I think this, that we can permit the offering of the book and permit it to be withdrawn and returned to circulation.

By Mr. Kilbourne: That's satisfactory with me.

By Mr. Collins: Thank you, Your Honor. I have offered these, and I ask that the mailing-jacket be identified as "Defendants #2," and the book as "Defendants #3."

By the Court: Let the mailing-jacket be so marked as "Defendants #2," and received in evidence; and the Library book, "The Story of the Negro," be received as "Defendants #3," with leave of Court granted to return the book to circulation at the Audubon Regional Library.

XQ. Mrs. Perkins, on this card which was sent to Henry Brown, the following statement is made: "You may return the book either by mail or to the Blue Bookmobile, whichever will be the most convenient." What is the significance of that statement?

A. Patrons who live out of Town are always given this choice.

[fol. 145] XQ. Isn't it a fact that the purpose of this card was to preclude the defendant from returning to the Audubon Regional Library?

By Mr. Kilbourne: If Your Honor please, I object, I suggest that the card speaks for itself.

By the Court: Sustain the objection.

XQ. Isn't it a fact, Mrs. Perkins, that the Blue Bookmobile was the one that was designated to be used by Negroes only?

By Mr. Kilbourne: I object, Your Honor, its irrelevant.

By the Court: Sustain the objection.

By Mr. Collins: To which ruling of the Court, counsel for the defendants respectfully reserve a Bill of Exceptions, making the question, and the record a part thereof.

By Mr. Collins: That's all I have.

Cross examination.

By Mr. Bell:

XQ. One question more, Your Honor, I think the witness testified on direct, or on cross, that the Audubon Regional Library owned 2 Bookmobiles, is that not correct, Mrs. Perkins?

A. We do not own, we have the use thereof, yes.

XQ. Who owns the machines, Mrs. Perkins?

A. The Bookmobiles are loaned to the Audubon Regional Library by the Louisiana State Library.

[fol. 146] XQ. In the card that was introduced, you referred to one of them as "Blue", what is the color of the other Bookmobile, Mrs. Perkins?

A. It is red, you mean the Blue and the Red?

XQ. Yes. You have a Red Bookmobile, and a Blue Bookmobile, is that correct, that services the Audubon Regional Parishes?

A. Yes.

XQ. I think you mentioned that they serve 33 schools, that's both the white and colored schools, is that correct, Mrs. Perkins?

A. Yes.

XQ. In the postcard you specified that Henry Brown return this particular book, "The Story of the Negro, by Arna Bontemps," either by mail or to the Blue Bookmobile, is that correct?

A. I did not specify, I said, "may."

XQ. "You may return the book either by mail or to the Blue Bookmobile?"

A. Yes.

XQ. You did not mean to imply by that statement that he could not return it to the Red Bookmobile?

A. "May" is permissive.

XQ. "May?"

A. Yes.

By Mr. Bell: Thank you, Mrs. Perkins.

Witness excused.

[fol. 147] The witness, SHERIFF ARCH V. DOUGHTY, after first having been duly sworn to tell the truth, the whole truth, and nothing but the truth, so help him God, testified as follows:

Direct examination.

By Mr. Kilbourne:

Q. Please state your name for the record?

A. Arch V. Doughty.

Q. Sheriff Doughty, did you have an occasion to arrest the defendants in this case on the 7th of March at the Audubon Regional Library here in Clinton?

A. I did.

Q. Do you recall about what time that was?

A. Right around 11:00 or 11:30, I believe, between 11:00 and 12:00.

Q. Would you tell the Court just what you found when you got to the Regional Library?

A. When I got there, I believe a couple of the Deputies were there already, Mrs. Perkins, Mrs. Reeves; and the 5 defendants were in the building, Henry Brown was sitting at a table or desk. Mrs. Perkins told me that she had taken an application—or someone had taken an application, and had asked them to leave. I, in turn asked them to leave, and Henry Brown more or less acted as a spokesman for them, he said that it was a public library, and he wanted service

there. I asked him the specific question, if he would leave, and he said that he wouldn't, and I asked the others if that was their decision also, and they said it was that they were [fol. 148] going to say with him, and then I arrested them.

Q. Sheriff, did you recall questioning some of these defendants at the jail afterwards?

A. Yes, sir.

Q. Do you recall—I will ask the question this way: Did you test the ability of one of these defendants to read?

A. Yes, I did.

Q. Do you know which one it was?

A. I believe it was this one over here, on this end, right here, I don't know his name. I picked up a little piece of printed matter that was on the jailer's desk, I think it had to do with the Junior Baseball Program. He said that he had been to the Regional Library to check out a book he wanted to read, and I offered him this printed matter, and picked a paragraph I wanted him to read, and I told him to read it, to start at the top of it. He looked at it quite a while and made out a few words on it, it seemed to be pretty much of a task for him to read what was there; in fact he said it would have been very hard for him to read it.

Q. Had you had some advance notice that some sort of demonstration was to take place at the Library?

A. Yes, sir, I did. Normally in the past, someone affiliated with CORE usually calls when they are going to picket.

Q. When you say "CORE" do you mean the Congress of Racial Equality ?

A. Yes, sir, the Congress of Racial Equality, and they [fol. 149] tell me when they are going to demonstrate or picket, or whatever they intend to do, and ask for police protection. This particular day no one called me from CORE, or from anyone who had connection with the Congress of Racial Equality. I believe the first information I had on it was from Deputy Kent that they were going to sit-in, or that something was going to take place at the Library that morning. I was standing where I could see the Library, as a matter of fact, I was at my place of business when I saw these 5 colored males coming down the street

from an easterly direction towards the Library. Henry Brown was in front of them and he walked up to the library-door and entered first and the other 4 followed him. I called the jail to notify the Deputies that the people had gone in there and I didn't know what for, and I got there immediately after the Deputies got there.

Q. Approximately what time was it that you got this notice that some sort of demonstration was going to take place at the Library?

A. I think it was about 9:00 o'clock because I had expected it all morning after I got the notice, and I remember it was close to noon and nothing had happened until I saw them coming down the street.

Q. You say you saw them coming down the street, Sheriff, which way were they coming from—where were they when you first saw them?

A. They were about in front of Attorney Van Buskirk's [fol. 150] office when I saw them on the sidewalk walking towards the Library.

Q. Were they in a group?

A. Yes, sir.

Q. Do you recognize Henry Brown?

A. I knew him, yes, sir, but I didn't know any of the others.

Q. Did you ascertain from the defendants or from Henry Brown where they resided?

A. Yes, I did. When we booked them in at the jail I asked them where they lived and they said West Feliciana, four of them, and Henry Brown was from East Feliciana.

Q. Did you ascertain from them why they were over here that day?

A. I did, and they stated that they wanted to check out some books, different books. One of them stated that they were over here to integrate the Library, that was his purpose.

Q. Do you recall which one it was?

A. Yes, this one, the second one.

Q. Sheriff Doughty, can you identify the defendants by name?

A. Only Henry Brown. Let me correct myself, I could be mistaken, it might the second one from the end here, between these two over here.

Q. Had you ever seen any of them besides Henry Brown before?

A. I saw them when they came into Town that morning, they passed right along the street out there but I didn't know who they were, or who they were in Town with; I knew they were some I had never seen before.

Q. Did you ascertain whether or not they came over from [fol. 151] West Feliciana together?

A. Yes, sir, they did, and they didn't know who they came with, they caught a ride.

Q. Will Willie Kelly please stand?

A. (The witness did so.)

Q. Can you identify this man here as being one of the men in the library?

A. Yes, sir.

Q. You may sit down. Will L. C. Bibbins stand up please? Can you identify him as being one of the defendants arrested in the Library on the 7th of March?

A. Yes, sir.

Q. Robert Smith please stand up?

A. Robert Smith is one also.

Q. Cleveland McKinzie?

A. Yes, he is the other one.

By Mr. Kilbourne: I tender the witness.

Cross examination.

By Mr. Collins:

XQ. Sheriff, you said that at the time you saw these 5 colored males going into the Library you then decided to go over and see what was going on, is that correct?

A. When they entered the Library, I decided to go over. First, I called the jail to tell the Deputies that there were 5 colored males going into the Library. I had had some advance warning that something was going to take place

there. Four of these boys were dressed in kind of macinaws, [fol. 152] dark clothes, kind of much the same, as they were coming down the street; Brown was dressed in a light-gray, three-quarter length coat.

XQ. Is there anything unusual about Negroes going into the Library in Clinton?

A. I had never noticed any going in there before.

XQ. To your knowledge has any Negro ever attempted to use the Library?

A. I wouldn't know, I think that was only the second time I had been there myself.

XQ. Sheriff, did you arrest these people, these defendants, because you considered their action going into the Library as a demonstration?

A. I arrested them because the occupants of the building had asked them to leave, and so had I; it was a public building and they refused to leave.

XQ. At the time you first walked into the building, Sheriff, what were these defendants doing?

A. All of them were standing around a table, all except Henry Brown, he was sitting at the table, or desk.

XQ. About how long was this after the time you first saw them go into the Library?

A. Approximately 10 minutes.

XQ. What did you tell them when you went in, Sheriff, did you have any conversations with these people?

A. Not with them, I talked to Mrs. Perkins, and she told me that she had taken their application and had asked them [fol. 153] to leave, and they wouldn't, and I asked them to leave. Henry Brown told me it as a public library, the rest of them didn't say anything.

XQ. Did Brown mention anything to you about wanting a book on the Constitution of the United States?

A. He did not.

XQ. After Brown told you that it was a public library, what did you say then?

A. I don't know of anything that I said. I was assured that Mrs. Perkins had asked them to leave since they didn't have the book they wanted.

XQ. Did you, at that point, ask them to leave?

A. I did.

XQ. When you—

A. —And I also told them that they had the choice of leaving, or be arrested for not leaving a public building when asked to do so by an officer.

XQ. When you got there, Sheriff, was anybody making any noise?

A. No noise.

XQ. So the disturbance of the peace if any in this case, consisted of refusing to leave when ordered to do so by you, is that right?

A. That's right.

By Mr. Collins: No further questions.

Re-direct examination

By Mr. Kilbourne:

Q. Sheriff Doughty, had these defendants left when you asked them to, or ordered them to, would you still have [fol. 154] arrested them?

A. No, sir.

Q. I believe that you already testified that when you got there Henry Brown was sitting down at a table, and the other 4 defendants were standing, is that right?

A. Yes, sir.

Q. Were they standing by him, or near him?

A. Right near him around the table, all in a group.

Q. Did anyone of them say anything to you about wanting to stay around there and read, or anything of that kind?

A. I don't believe that any of them said anything except Brown, at the time, until I asked him if that was their decision to stay—the same decision that he had made, to stay or be arrested, leave or be arrested. They said that they were going to stay with Brown.

Q. In your questioning of the defendants, did you ascertain if Henry Brown was the leader?

A. The impression that I got, since he was in front as he came down the sidewalk, and he went into the building first, he was the leader and they were following him.

Q. Whatever was said while the group was there, was he the one that was doing the talking?

A. Yes.

Q. Do you know Henry Brown?

A. I do.

Q. You see him sitting here, do you not?

A. I do.

By Mr. Kilbourne: That's all I have.

[fol. 155] Cross-examination

By Mr. Bell:

XQ. Sheriff, I think you stated that you only talked to Henry Brown while you were making these arrests, is that correct, sir?

A. I asked Mrs. Perkins if she had asked them to leave, and she said that she had, and then I asked them to leave, and Brown was the only one who spoke up at the time. Then I asked the others if that was their decision to stay also.

XQ. What did they say?

A. They said that it was, that they were going to stay with Brown. Up until then they hadn't had anything to say to me, I don't know what was said before I got there.

XQ. Prior to your asking these defendants to leave, did you ask each of them, all of them, whether or not they intended to use the reference-books at the Library?

A. I didn't ask them what they intended to do, and they didn't state at that time what they were doing there.

XQ. I think, as you know, Sheriff, under the Law in certain types of Disturbing the Peace situations, you have a right to ask people to move out of public or private places, as given to you by the Law; I think you stated that this was a public place?

A. A public Library, yes.

XQ. Did you ascertain whether or not they wanted to use this Library for reference reasons before you arrested them?

A. I gathered from the information that I had gotten [fol. 156] from Mrs. Perkins that she had taken the application for the book they wanted, and that it wasn't available, it wasn't there, she in turn asked them to leave.

XQ. Were you present when she asked them to leave, sir?

A. No, I was not.

XQ. But you did not ask them directly whether they intended to use the reference books?

A. No, I did not.

By Mr. Bell: That's all I have, thank you, Sheriff.

By Mr. Kilbourne: I believe that's all I have.

Witness Excused.

By the Court: It is now 11:45, and before we get on another witness, suppose we adjourn for lunch until 2:00 o'clock.

Court Adjourned at 11:45 A.M.

Court Convened at 2:00 P.M.

By Mr. Kilbourne: Your Honor, I would like to recall Mrs. Perkins to the stand.

By the Court: Mrs. Perkins you have been sworn and you remain under oath in this case.

[fol. 157] Mrs. MARSHALL PERKINS recalled:

Direct examination

By Mr. Kilbourne:

Q. Mrs. Perkins, how long have you been in library work?

A. About 20 years.

Q. How long have you worked at the Audubon Regional Library?

A. Since 1960.

Q. How long has the library you have worked with been in existence in the Parish of East Feliciana, in the Parish of West Feliciana, and in the Parish of St. Helena?

A. It's been—the library was opened in May of 1961 as a demonstration library.

Q. When did it become the Audubon Regional Library operated by the 3 Parishes?

A. Since last year, the first of May.

Q. Have you been connected with this library here since its inception, that is since 1961?

A. Yes, sir.

Q. Mrs. Perkins, during that time, have you in your work in this Library ever been confronted with the situation where 5 apparently grown men walked in and demanded service under the circumstances that these defendants demanded it? Or, have you ever been confronted with a situation in which 5 grown men walked in the Library and requested service?

A. I don't think so.

By Mr. Bell: Your Honor, I would like to object. I don't see any relevancy in the question whether 5 persons [fol. 158] had ever asked for service in a public library, and what has it to do with the guilt or innocence of this accused. The question is certainly immaterial and irrelevant, and for that reason I object to it.

By the Court: It might be relevant as far as it goes to the question of whether to vacate the premises.

By Mr. Kilbourne: For the benefit of the Court and of counsel, I will state that we are simply attempting to show that this is a very unusual situation calculated to create a disturbance.

By the Court: The Court will overrule the objection.

Q. What was your answer?

A. I don't think so.

Q. Mrs. Perkins, who was working in the Library on that particular morning?

A. The person who was on duty at the Branch was Mrs. Reeves and I.

Q. Do you have any male employees in the Library working?

A. Not in the Branch.

Q. For those who were present, did it create a disturbance, that what happened there that morning?

By Mr. Bell: I am going to object to that, Your Honor, [fol. 159] I think the whole purpose of this trial is whether or not they violated RS 14:103.1.

Q. I will withdraw the question, I will ask it this way, were you disturbed?

A. Yes.

By Mr. Kilbourne: I have no further questions. Just a minute, Your Honor, I have one more question.

Q. Do you know Willie Kelly by name?

A. By name, no.

Q. Willie Kelly, will you stand up?

A. (The witness did so.)

Q. Do you know him now? Do you recognize him as being one of the defendants?

A. As being one of the people there.

By Mr. Kilbourne: That's all I have.

Cross examination.

By Mr. Bell:

XQ. Mrs. Perkins, I think you testified in answer to the District Attorney's question as to whether or not you ever had 5 persons ask for service at the Regional Library, and I think you testified that you had not.

A. Not 5 at one time, and where only one person wanted the service.

XQ. You don't regularly attend the request for service at the 3 Branches, do you, Mrs. Perkins?

A. I am there and they usually ask me if there is some-
[fol. 160] thing that they do not know.

XQ. I think Mrs. Reeves was in charge of service at this particular Branch at that time?

A. Yes.

XQ. You have 2 other Branches in other Parishes with which you are in charge?

A. Yes.

XQ. If 5 persons had presented themselves for service at some other time, you would not have known of it unless some unusual disturbance had been called to your attention?

A. That would probably be true unless I happened to be there at that Branch, which I am occasionally.

XQ. And you are in charge of all 3 Branches?

A. Yes.

XQ. Mrs. Perkins, you testified that you were in the headquarters' portion, you were in the back, I think, at the time these persons entered?

A. Yes.

XQ. And you merely came to the front when you were requested to do so by Mrs. Reeves?

A. Yes.

XQ. While you were in the rear portion of the building, you didn't hear any disturbance, did you?

A. I could hear voices back there, yes.

XQ. Were they loud and boisterous?

A. Not until I came out, of course they were talking.

XQ. Who was talking? I think you testified that no one
[fol. 161] said anything, I think those are your words, "no one said anything." Who was talking loud?

A. Henry Brown when I came out.

XQ. Are you saying now that he talked loud enough to disturb you?

A. Yes.

XQ. I think the District Attorney asked you whether or not—which were you disturbed by, the presence of the 5 persons, or were you disturbed by the loud talking of Henry Brown?

A. I simply couldn't understand, I mean, it isn't normal to loiter in the Library once you have been served. If you make no other request and want no other book, you usually get your book and go on your way.

XQ. I was trying to find out, Mrs. Perkins, whether or not you were disturbed by the presence of these 5 persons, or whether you were disturbed by what you call the loud talking by one of the accused named Henry Brown?

A. Well, I think it was a combination in that we had served him, and he asked for no further service.

XQ. Did you ask the other persons whether they requested service or not?

A. She told me that he had, and of course we had served him.

XQ. Mrs. Perkins, could you tell us approximately how many persons request the use of the various libraries during the course of a day?

A. We don't keep a record, I really don't know.

XQ. You couldn't estimate whether its 20, 25, or 50, or [fol. 162] 100, or something like that?

A. No, I couldn't, because you see I am not always out at the point of service.

XQ. And your records wouldn't show—

A. The records we keep are circulation records which show how many books were borrowed during the day, and it would also show how many reference questions we might answer; but there is no distinction as to whether this was telephone information, or not, we have no record of it.

XQ. Don't you keep records at the various libraries of who comes in to register, wouldn't that indicate to you the amount of business you are doing?

A. No, it would depend on the number of people who are already registered as well, and people may come to a library once, and never come back again.

XQ. Do you keep any registration-records at these libraries at all?

A. We keep registration-records at headquarters, yes, and they keep a weekly-record, and a monthly-record.

XQ. The headquarters are here in Clinton?

A. Yes.

XQ. Your records, then, would show who all is entitled to use the library?

A. Well, we do not have one general registration, in other words, we do not have a headquarters, a record of every person who is qualified to use the Library. You see, this is expensive and that is why we do not do it, we have [fol. 163] it by point of service, wherever a person is registered, that is where his registration-card is.

XQ. Is a person permitted to register at more than one of the libraries?

A. No, there is not any point in registering at more than one of the libraries.

XQ. Is a person permitted to use any particular—I mean, is he restricted to the use of the library where he is registered, or can he use any one of the Branches?

A. Well, yes, he could.

XQ. In connection with the Defense-#1, and #2, and #3, we note that you allowed one of the accused to have a book—

A. Certainly.

XQ. —without any, how can you charge him with the book unless you had a record of his registration?

A. I checked his registration-file from the Bookmobile, and I determined that he had a card, and furthermore the identification card was there, and that there were no fines against his name, and no lost books, so therefore we gave it to him.

XQ. And you did that from the registration-files at the—

A. At the Blue Bookmobile.

XQ. At the Blue Bookmobile?

A. That is correct.

XQ. On the matter of being disturbed, isn't it a fact that you were really disturbed because no Negroes usually patronized this particular Branch of the Library, they are more or less restricted to the Blue Bookmobile?

A. They normally use the Blue Bookmobile, yes.

[fol. 164] XQ. And isn't it a fact that all Negroes of the

3 Parishes are registered through the Blue Bookmobile, as far as your records show?

A. I believe so, yes.

XQ. And aren't your records designated for registration as to race?

By Mr. Kilbourne: If Your Honor please, I am going to object to this line of questioning, we are not trying an integration suit here today, we are trying a Disturbing the Peace charge.

A. No.

By Mr. Bell: Your Honor, I don't believe—

By the Court: The witness has answered the question.

By Mr. Kilbourne: I would like to object to the further pursuance of that line of questioning.

By Mr. Bell: That's all the questions I have, thank you, Mrs. Perkins.

Witness excused.

By Mr. Kilbourne: I would like to recall Sheriff Doughty.

[fol. 165] Sheriff Arch V. Doughty recalled.

By the Court: Sheriff Doughty, you have been sworn and you remain under oath in this case.

Direct examination.

By Mr. Kilbourne:

Q. Sheriff Doughty, did you ascertain from the defendants that none of them was a juvenile?

A. None were juveniles, they were 17 and older.

Q. I believe that you have already testified that all but one was from West Feliciana Parish?

A. That's right.

Q. Sheriff, did you ascertain when and where the defendants got together before they came to Clinton to go to the Library?

A. I tried to find that out, but they gave conflicting stories on it, some said they caught rides, and it was hard

to determine just where they did get together; some said downtown in St. Francisville, some said up here at the house, at the lodge-building up north of St. Francisville.

Q. Wherever they did get together, did you ascertain that they did get together for the purpose of coming to the Library?

By Mr. Bell: Objection, Your Honor, that goes to prove another line entirely, that's for conspiracy, and they are on trial for Disturbing the Peace, Your Honor, and not for the crime of conspiracy.

[fol. 166] By Mr. Kilbourne: Every crime involving more than two people also involves the crime of conspiracy, Your Honor.

By the Court: The Court overrules the objection.

By Mr. Bell: I would like to take an Exception to that, and ask that the question, the answer, and ruling of the Court all a part of the Bill of Exceptions.

Q. Will you answer the question, Sheriff?

A. That was the general idea, that they had gotten together and had come to Clinton to the Library.

Q. Sheriff, directing your attention to the defendant, Willie Kelly, do you recall whether or not he was specifically asked—whether he specifically said whether or not he wanted to get a book from the Library or not?

A. Willie Kelly was the one that was reading the little pamphlet that I had there, and he told me that they came to Clinton to sit-in at the Library.

Q. Willie Kelly told you that?

A. He did.

By Mr. Kilbourne: I tender the witness.

Cross examination.

By Mr. Bell:

[fol. 167] XQ. Sheriff, you know Mrs. Perkins and Mrs. Reeves, don't you?

A. Yes, sir.

XQ. Now, just for the record, they are members of the White race, are they not?

A. Right.

XQ. As yourself?

A. Right.

XQ. I think you testified that you were not called by Mrs. Perkins or Mrs. Reeves?

A. I was not called, I started over there, in fact I called the Deputies to go over there when I saw these 5 boys go in the Library; and it was probably 5 minutes between the time they got there that the Deputies and myself were there.

XQ. I think you testified previously that you had been alerted that a group of Negroes would try to go into the Audubon Reginal Library?

A. That something was going to take place at the Library, they didn't specify what; and when these 5 people, 4 of whom I didn't know go in the Library, I was interested in what was going on.

XQ. Your office is not too far from the Library, isn't that right, Sheriff?

A. That's right.

XQ. It's right here in the Court House?

A. That's right, or was at that time.

XQ. Did you note at any time any White persons enter-
[fol. 168] ing and leaving the Library?

A. I saw one other person go in, I believe, after the defendants went in, and then the Deputies went in behind him.

XQ. As far as you know, that person was served without any incident, is that right?

A. I don't know if he went after a book or what, he just walked in behind them, and he was still there while we were there, and he was there when we left.

XQ. Did you see a young White lady go in?

A. I don't recall seeing anybody else go in at that time.

XQ. Was she already in the Library at that time?

A. Mrs. Perkins?

XQ. No, one of the White patrons?

A. I didn't notice anyone else going in. After the 5 defendants went in, the Deputies went in, and then I saw a White man go in.

XQ. Sheriff, you have been Sheriff for several years, have you not?

A. Since 1956.

XQ. And your office has always been in the same place, right across the street from the Audubon Regional Library?

A. In the southeast corner of the Court House.

XQ. And you have a private place of business located within view of the Audubon Regional Library, isn't that right?

A. That's right.

XQ. In your time, since you have been here and in your [fol. 169] place of business, have you ever seen any Negroes enter the Audubon Regional Library?

A. I don't recall seeing any go in, there is quite a bit of traffic in and out over there in those different buildings, but I don't recall seeing any go in and out there.

XQ. So, the fact that when 5 Negroes entered this Library, it was an unusual situation, isn't that right?

A. After having been alerted that something was going to take place over there at the Library, yes.

XQ. And as Sheriff of this Parish, you would be in a position to know that it has been customary for the Parish to maintain segregation of the races?

By Mr. Kilbourne: I object, Your Honor.

By the Court: I sustain the objection.

By Mr. Bell: To which ruling we except and ask that a Formal Bill of Exceptions be reserved, making the question and the answer, and the ruling of the Court all a part of the Formal Bill.

By the Court: In ruling, I think the question is not only irrelevant but misleading, and no one today can give me a definition of what segregation is. Look around this Court Room right here, and would you say we are segregated? [fol. 170] Ridiculous to say that we are segregated.

By Mr. Bell: No other questions, Sheriff.

Redirect examination.

By Mr. Kilbourne:

Q. Just one more question, Sheriff. In regard to your testimony about someone receiving information that something was going to happen at the Library, Sheriff, as a law-enforcement officer, did it occur to you immediately to keep the Library under surveillance when you got there?

A. It did, I kept an eye on the Library, and I posted all of the Deputies, I alerted them.

Q. Have you gotten warnings in the past prior to this incident that some kind of disturbance or demonstration was going to take place in the Community?

A. As well as I remember, each time there has been a picket-line or anything along that line, I have always been called by someone.

Q. Have you frequently received notice from the Federal Bureau of Investigation?

A. I have, they usually want to know if we need any assistance.

By Mr. Kilbourne: I have nothing further.

Witness excused.

By Mr. Kilbourne: Your Honor, the State rests.

MOTION FOR DIRECTED VERDICT AND COURT'S OVERRULING THEREOF

[fol. 171] By Mr. Bell: May it please the Court, at this time the defense would like to move for a directed verdict on several grounds, the first of which, of course, is that the State has failed to make a case against all of the defendants, and has not proven all of the elements of the crime as charged. I would like to respectfully call attention to the Court that the record will show that the basis of foundation of any criminal prosecution is proof of the jurisdiction of the case, or whether this Court has jurisdiction; and the State has failed to prove that a crime, if any, occurred in the Parish of East Feliciana in which it is being

tried. I think the record will show that the State has offered no proof that this crime occurred in this particular Parish, and for that reason the defense moves for a Directed Verdict.

By the Court: Would the State like to be heard on it?

By Mr. Kilbourne: Of course, that takes me a little bit by surprise. I believe that we have proven that the offense [fol. 172] occurred right across the street from the Court House, right where we are sitting now; and I simply say this, I believe the Court will take cognizance of the fact that the Town of Clinton is in the Parish of East Feliciana, and the Library that we have been talking about all day is right directly across the street from the Court House, and I can't believe that counsel would urge that seriously, but that's all I have to say.

By Mr. Bell: Your Honor, I am aware—in fact I have it written here in my notes that it was brought out that the crime was located across from the Court House—that the crime was committed in the Library located across the street from the Court House, but I submit that that type of proof of jurisdiction is not—it's too vague and too ambiguous on which to base a conviction of 5 persons. If the Court would allow us time we could give you ample Briefs and proof that this type of proof as submitted by the District Attorney, as the proof of jurisdiction, which is the [fol. 173] basis of any criminal prosecution, it's time and time again been disallowed by our State Supreme Court.

By the Court: Didn't the Sheriff testify that this occurred across the street from the Sheriff's office, and that he was the Sheriff of East Feliciana Parish?

By Mr. Bell: That's right, but what I am saying, Your Honor, at no time was this crime alleged to have occurred, to use the word, "East Feliciana." I realize that that is a technical point, but I can assure Your Honor that this is a very serious urging of this point, and I think this is one of the things that you must prove in a criminal prosecution. The State must prove every element, every allegation of the Bill of Indictment, or Information. I think Mr. Kilbourne has alleged that this crime occurred in the

Parish of East Feliciana, and no proof has been offered that it has occurred. Across the street from the Court House by the District Attorney could mean two Parishes, [fol. 174] it could easily have been committed over in St. Francisville, which Your Honor is Judge over there too. I don't think the record would show on its face, as it stands now, this case is vulnerable for a Motion—

By the Court: Counsel, I can look out of the window and see—

By Mr. Bell: I submit all of that, Your Honor.

By the Court: —the Library, but of course, what you are saying is that: "Justice should be ever so blind?"

By Mr. Bell: All that I am saying, Your Honor, is that the procedure of this State, and the technicalities of criminal procedure requires that the record shows where the crime was committed without any hesitancy, without any guess.

By the Court: Do you think the District Attorney should take a tape measure and measure from the Court House to the place where the incident occurred, and then have another measurement to the Parish line to be able to prove it?

By Mr. Bell: No, sir, I am saying that he must use [fol. 175] East Feliciana as the Parish where the crime took place; he must prove, the record must show without any hesitancy, without any ambiguity that the crime was committed in this Parish. Now, I know, but I am not going to clear the record, what these words mean, and I am quite sure that everybody in this Court Room knows what they mean; but I say that the State must use the official name to give this Court proper jurisdiction on which to base a conviction in a criminal case.

Now, we can Brief this, and we are not trying to be hypothetical, but I think this is one of the basic rules of criminal procedure, that the situs of the crime should be made very, very plain; and I think if we should read the Bill of Information it says on there, "Parish of East Feliciana," that this crime was committed on a certain date.

By Mr. Kilbourne: If Your Honor please, Your Honor in this case would be in the same position a jury is. If [fol. 176] Your Honor is satisfied and knows where the crime is committed, that is all that the Law requires. I think that counsel could Brief this from now until Eternity and I am confident that he is not going to find any Law that is going to sustain what he is saying here today. I would like to have the Court rule on his Motion so we can get on with the case.

By the Court: The Court will overrule the Motion for a Directed Verdict.

By Mr. Bell: To which ruling, we respectfully except, and ask that the Motion, the argument, the objection of the District Attorney, and the ruling of the Court all be made a part of the Formal Bill of Exceptions.

By Mr. Collins: We would like to call for the defense, Mrs. Laura Spears.

[fol. 177] The Witness, Mrs. Laura Spears, after first having been duly sworn to tell the truth, the whole truth, and nothing but the truth, so help her God, testified as follows:

Direct examination.

By Mr. Collins:

Q. State your name, please?
A. Mrs. Laura M. Spears.
Q. What is your address, Mrs. Spears?
A. Box 384, Clinton, Louisiana.
Q. What is your occupation?
A. Unemployed housewife.
Q. What is your race?
A. Negro.
Q. What was your former occupation?
A. I was formerly employed by the Audubon Regional Library in Clinton.
Q. What did you do for the Audubon Regional Library?

A. I was Bookmobile 2 Assistant, I was in charge of the Blue Bookmobile. I was in charge of the service that served all Negro schools in the Communities throughout the 3 Parishes, East and West Feliciana, and St. Helena Parish.

Q. Do you know the defendants in this matter?

A. I know Henry Brown, he knows my parents, but I don't know him personally.

Q. Did you ever have occasion to register Henry Brown with reference to his borrowing books?

A. Yes.

[fol. 178] Q. Did you ever have any occasion to have any dealings with Henry Brown with reference to your duties as a Bookmobile librarian?

A. Yes, I served on the Bookmobile.

Q. What procedure is adopted in registering a person for books?

A. Well, we issued a card to a person who filled the required information out, and the card is stamped with the word, "Negro," and date.

Q. And then the person has the privilege of borrowing books, is that correct?

A. Yes.

Q. Do you ever register any white persons to borrow books?

A. No.

By Mr. Kilbourne: If Your Honor please, I want to object to that question, its irrelevant, immaterial.

By Mr. Collins: Your Honor, we think this question is very relevant to the very basis of this charge. We intend to prove by this question the segregated system with reference to library services in the Parish of not only East Feliciana, but throughout the region serviced by the Audubon Regional Library. I think we cannot do it except by this line of questioning.

[fol. 179] By the Court: The Court will overrule the objection.

Q. Have you ever registered any White persons?

A. No.

Q. Why is that that you haven't?

A. Well, the only persons who use the Blue Bookmobile is Negroes, and the Blue Bookmobile serves the 3 Parishes for all Negroes; and occasionally if a White person would come to the Blue Bookmobile, I would give them a schedule telling them when the Red Bookmobile would come, or the nearest Branch to them.

Q. Did Negroes customarily use the Branch Library located in the City of Clinton?

A. No.

Q. If they wanted books, how would they get their books?

By the Court: Counsel, I don't think there is any foundation laid for that question.

By Mr. Kilbourne: Your Honor, I never did understand your ruling on the last objection I made, I never was heard on it.

By the Court: I think we will just stop pursuing any more on this; I think we are trying a case here as to whether or not there was any disturbance that was unusual by these [fol. 180] patrons, the defendants.

By Mr. Collins: Your Honor, I think we are getting up to that question with reference to the presence of these persons in the Library, that's the very issue of the case.

By the Court: The witness has testified that she has been on a Bookmobile, she has said nothing about being in the Library; now she is testifying about what has taken place in the Library.

Q. How long were you employed by the Audubon Regional Library?

A. Two years and six months.

Q. When did you start your employment?

A. April 12, 1961.

Q. At this time you were then employed as a Bookmobile Librarian, is that correct?

A. Bookmobile 2 Assistant.

Q. How long did you continue in this capacity?

A. From December—pardon me, until December 31, 1963.

Q. In your capacity as a Bookmobile 2 Assistant, did you have occasion to frequent the Clinton Branch of the Audubon Regional library?

A. The Clinton Branch is headquarters for all of the Bookmobiles, and we would have to leave there every morning and come back in the afternoon.

[fol. 181] Q. So that you would be in a position to know whether or not Negroes used the facilities of the Clinton Branch of the Audubon Regional Library, is that correct?

A. Yes, I would know about when I was in, now I don't know about when I was out.

By Mr. Collins: I tender the witness.

Cross examination.

By Mr. Kilbourne:

XQ. As far as this particular case is concerned, you have no personal knowledge of it, whatsoever, do you?

A. No.

By Mr. Kilbourne: I have no further questions.

By Mr. Collins: The defense rests, Your Honor.

By Mr. Kilbourne: The State closes.

[fol. 182] COURT'S RULING

By the Court: This is a case, the State of Louisiana vs. Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith, and Cleveland McKinzie, in which they are charged with violation of R S 14:103.1 relative to Disturbing the Peace and with the intent of provoking a Breach of the Peace, and under the circumstances such that a Breach of the Peace might be occasioned thereby, they congregated together in the Audubon Library building in the Town of Clinton, Louisiana, and did then and there fail and refuse to leave such premises when ordered to do so by Mrs. Marshall Perkins who was then and there in lawful charge of said premises; and that further, the accused failed to leave said premises when ordered to do so by Arch V.

Doughty, the Sheriff of the Parish of East Feliciana.

There has been great effort to make these facts of this case much more difficult than it is, I guess better in keeping with the trends of these times.

The evidence clearly shows that these 5 men went into the [fol. 183] Library, that they asked for a book and were served, at least their order was taken. Of course, the Library at that time, being occupied only by two female library-workers, they then asked the parties to leave. This was done twice, and finally the Sheriff again asked them to leave.

Considering these facts and the further Law on the case which has been prescribed by the Legislature of this State, that is: A misdemeanor termed by anyone doing the following acts in a manner disturbing the public. Paragraph one includes the refusal to leave the premises when requested or directed to do so by the owner, lessee, or any employee.

Clearly the evidence shows that these parties did not congregate when they came to the Town of Clinton, to the Audubon Parish Library, merely for the purpose of seeking service; that they had a specific motive and a specific intent, and that was, as was shown beyond any reasonable doubt, to refuse to leave the Library even after they had [fol. 184] been served, and after they had been requested three times.

If the Court were to say that people who had been entrusted with the control of the property of this State, this Parish which belongs to all of us, were to be able to be flagrantly repudiated with a new system of contempt, and ridicule, certainly we would no longer exist then as a society of men and Law.

The Court will find the 5 defendants guilty as charged. The Law, counsel, allows 24 hours delay before sentencing unless you desire to waive same.

By Mr. Bell: May it please the Court, of course we are not going to except to the Court's ruling, but we would like to request an extension of time before sentencing so that we may obtain a complete transcript from the Court

Reporter in order to prepare any post trial motions that we care to entertain.

By the Court: How about May 26? Let the record show that an extension for sentencing is granted until May 26.

Court adjourned.

[fol. 185] Clerk's and Reporter's Certificates to foregoing transcript (omitted in printing).

[fol. 186]

SUPREME COURT OF THE UNITED STATES

No. 806—October Term, 1964

HENRY BROWN, et al., Petitioners,

v.

LOUISIANA.

ORDER ALLOWING CERTIORARI—May 3, 1965

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. [redacted] 41

FILED
JAN 4 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND McKINZIE

Petitioners,

vs.

STATE OF LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. .....

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND MCKINZIE,

Petitioners,

VS.

STATE OF LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioners pray that a writ of certiorari issue to review the decree of the Supreme Court of Louisiana entered in the above-mentioned case on October 26, 1964 which denied petitioners' Application for Writs of Mandamus, Certiorari and Prohibition, thus affirming the conviction rendered by the Twentieth Judicial District Court of East Feliciana Parish, Louisiana (herein called the District Court), on April 9, 1964. A stay of execution of petitioners' sentences for a period of thirty days was granted by the Supreme Court of Louisiana on November 4, 1964, and was subsequently extended for an additional period of thirty days expiring on January 4, 1965.

Opinions Below

The District Court found petitioners guilty, without written opinion. The memorandum opinion of the Supreme Court of Louisiana is unreported and appears in Appendix A hereto, *infra*, p. 1a.

Jurisdiction

The convictions were rendered by the District Court on April 9, 1964. Petitioners' Motion for a New Trial was denied on October 7, 1964. Petitioners' application to the Supreme Court of the State of Louisiana for Writs of Mandamus, Certiorari and Prohibition was denied by decree of that court made and entered on October 26, 1964.

The jurisdiction of this Court in this case is invoked pursuant to Title 28, United States Code, Section 1257 (3).

Questions Presented

Petitioners, all residents of East and West Feliciana Parishes, Louisiana, were arrested and convicted on charges of disturbing the peace under a Louisiana statute R. S. 14:103.1 for their failure to vacate a public area of the Audubon Library Building, a library operated by the three parishes of East Feliciana, West Feliciana and St. Helena, jointly, in the Town of Clinton, Louisiana, after being requested to leave by the librarian and by the sheriff. The evidence showed that petitioners had entered the library to use the facilities available to the public. No evidence that petitioners were loud or boisterous or that any breach of the peace occurred was offered. Evidence was presented, however, showing that petitioners, all Negroes, were asked

to leave, although not disorderly, because it was the policy of the library not to serve Negroes at that building.

Did the arrest and conviction of the petitioners deprive them of rights protected by

(1) The Due Process clause of the Fourteenth Amendment to the Constitution of the United States in that they were convicted without any evidence of the essential elements of the crime;

(2) The Due Process clause of the Fourteenth Amendment in that they were convicted under a statute which, as interpreted, was so vague and indefinite as to afford no ascertainable standard of criminality;

(3) The Due Process and Equal Protection clauses of the Fourteenth Amendment in that their arrests and convictions constituted enforcement of racial segregation;

(4) The First Amendment, as made applicable to the states through the Fourteenth Amendment, in that petitioners' freedom of expression has been abridged;

(5) Title III of the Civil Rights Act of 1964 in that such arrests and convictions constitute an attempt to punish petitioners for exercising their right to be free of discrimination?

Constitutional and Statutory Provisions Involved

This case involves the First and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1964, Public Law 88-352, 88th Cong., H. R. 7152, July 2, 1964; 78 Stat. 241, et seq.

The petitioners were convicted under §14:103.1 of the Louisiana Revised Statutes of 1950, which is set forth in full at Appendix B, *infra*, p. 1b.

Statement

On March 7, 1964, about 11:30 A. M., petitioners, all Negroes, entered the public reading room of the Audubon Library building in the Town of Clinton, Louisiana, a public library operated by three Parishes jointly (T. 70, 79) and supported by other agencies of the State of Louisiana (T. 87). Petitioner Henry Brown requested a book from the assistant (T. 59-60).*

Never before had Negroes been seen in this office of the Library (T. 94). In fact, Negroes were only served by the Blue Bookmobile (T. 119-121) and in addition to the use of the Audubon Library, whites were directed to the other locations if one should make any inquiries at this Blue Bookmobile.

After a second request to petitioners to leave, the assistant librarian called in the Regional Librarian; again petitioners were asked to leave. Remaining quietly in the reading room (T. 60-61), making no noise nor boisterous talk (T. 62, 73-74), no evidence was offered against petitioners that any person visiting the library was disturbed.

Approximately 10 to 15 minutes after petitioners entered the reading room (T. 76, 94) the Sheriff arrived at the library (on his own initiative, having seen the Negroes enter (T. 93)) and demanded that the petitioners leave

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* References to the Record are designated by the symbol "R". Although a transcript of the trial was made by an official court stenographer, in accordance with Louisiana practice it was not part of the Record before the Louisiana Supreme Court. To supplement the Record the transcript is submitted with this petition and references to it are designated by the symbol "T".

(T. 89). Indicating they would not leave, petitioners were thereupon arrested (T. 90). So far as anyone could see or hear, they were peaceful, yet at no time did the Sheriff inquire as to why the librarian asked petitioners to leave. Because they refused to leave when requested, they were arrested, and subsequently convicted (T. 94-95).

A Bill of Information was filed by the District Attorney on March 11, 1964, and petitioners appeared for trial on March 24, 1964. The trial was completed on April 9, 1964.

At the outset of the trial petitioners moved to quash the Bill of Information on the grounds (a) that the Bill did not inform petitioners of the crimes of which they were accused, (b) that the statute referred to therein was unconstitutional for vagueness, (c) that the statute and Bill fail to allege criminal or specific intent, (d) that the Bill and prosecution violate the First and Fourteenth Amendments to the Constitution of the United States by depriving petitioners of freedom of assembly and equal protection of the laws, and (e) that the statute and Bill represent an unlawful delegation of legislative powers.

Petitioners' Motion to Quash was denied, as was petitioners' demand for certain particulars regarding the elements of the offense charged by the State (T. 14).

At the trial the Sheriff stated that he arrested petitioners because they had been asked to leave by the occupants of the building, and because the building was a public building and he, as sheriff, had asked them to leave (T. 94-95, 97). Making no noise, the "disturbance of peace" by petitioners in the case consisted solely of their refusal to leave when so requested by him (T. 96).

Petitioners were seeking by their acts, the Sheriff testified, to effect a change of the policy of segregation in the Audubon Regional Library (T. 90-93). Prior to arresting petitioners, however, the Sheriff did not directly ascertain whether petitioners intended to use the facilities at the library building (T. 98).

Testifying that she was "disturbed" by the presence of petitioners (T. 101), the Regional Librarian offered no evidence, however, that her concern was communicated to anyone present at the time, or that anyone objected to any activity of petitioners other than their presence in the reading room, or what it was that petitioners did to cause her to be concerned.

The Audubon Regional Library provided library services to the public in three Louisiana parishes by means of three branch library buildings and two "Bookmobiles" supplied by the Louisiana State Library designated as the "Blue Bookmobile" and the "Red Bookmobile" (T. 70, 87-88). Negroes were registered with the library only at the Blue Bookmobile (T. 106) and were not afforded service at the other facilities (T. 63, 79, 111, 120-123).

The District Court found all petitioners guilty as charged (T. 126). On July 14, 1964 petitioners timely moved for a new trial on the ground that no evidence existed in the record to support the judgment. This motion was denied on the same day and the petitioners were thereupon sentenced as follows:

> Petitioner Brown; $150 and costs, and in default of payment of the fine, 90 days in the parish jail.

Petitioners Kelly, Bibbins, Smith and McKinzie; $35 and costs, and in default of payment of the fine, 15 days in the parish jail. (R. 29)

On July 28, 1964 nine separate Bills of Exceptions were filed relating to rulings of the District Court, including the denials of the demands for particulars, the Motion to Quash and the Motions for a New Trial (R. 12-26, 30-31). Per curiam opinions with regard to the nine Bills of Exceptions were rendered by the District Court on October 7, 1964 (R. 32-37).

Pursuant to a Notice of Application for Supervisory Writs filed on July 28, 1964, petitioners sought review under Louisiana Procedure of the judgment or conviction and sentence by the Supreme Court of Louisiana (R. 2-38). Under Louisiana law no direct appeal procedure was available, since the fines imposed were less than $300 and the jail terms less than six months. Writs of mandamus, certiorari and prohibition were sought under the general supervisory jurisdiction of the Supreme Court of Louisiana (Louisiana Constitution, Article VII, Section 10) and in accordance with Rule 12 of the Louisiana Supreme Court Rules.

On October 26, 1964, the Supreme Court of Louisiana unanimously denied petitioners' applications for writs of mandamus, certiorari and prohibition, holding that there was no error in any of the rulings and judgment of the District Court (R. 1). On October 28, 1964 bench warrants were issued by the District Court to effect execution of the sentences imposed upon petitioners. The District Court then adjourned until November 2, 1964.

On October 28, 1964 petitioners filed a petition with the Supreme Court of Louisiana for stay of execution of sentences, requesting 90 days to enable petitioners to file a Petition for Writ of Certiorari with this Court (R. 39-41). Initially petitioners were refused the stay, being advised that such stays would thereafter be issued only by the District Court. Petitioners Smith and McKinzie were arrested pursuant to the District Court's bench warrants on October 30, 1964 (R. 46).

On November 2, 1964 petitioners applied to the District Court for a stay of execution pending preparation of their petition to this Court for a Writ of Certiorari. The application for a stay was denied that same day (R. 51). On November 4, 1964 (following the Election Day holiday when the courts were closed) petitioners again applied to the Supreme Court of Louisiana for a stay, or alternatively for writs of habeas corpus and mandamus (R. 42-50). At that point the petitioners' first petition, which had been filed on October 28, 1964, was granted, but the stay of execution of the sentences was limited to a period of thirty days from November 4th (R. 41-a). The stay was subsequently extended for an additional thirty days, expiring on January 4, 1965 (R. 41-a).

How Federal Questions Were Raised

The Federal questions presented here were raised in the District Court by written Motion to Quash (R. 15-16) and written Motion for a New Trial (R. 26) and by written Bills of Exceptions to the denial of such motions, and in the Supreme Court of Louisiana by application for Writs of Mandamus, Certiorari and Prohibition (R. 4-7).

Petitioners accordingly raised their Federal claims at the earliest opportunity and renewed them at each stage of the proceedings below.

Reasons for Granting the Writ

The convictions below conflict with applicable decisions of this Court on important constitutional issues. If the conviction be upheld on the facts in this record, statutes such as we have before us can effectively be utilized to circumvent and nullify constitutional rights reaffirmed by the Civil Rights Act of 1964.

ARGUMENT

POINT I

The convictions below violate Constitutional guarantees of due process of law.

A. The Convictions Below Were Totally Unsupported by the Evidence

The material facts of this case virtually duplicate those in *Taylor* v. *Louisiana*, 370 US 154, 82 S. Ct. 1188 (1962), in which this Court held that a conviction of disturbing the peace could not be upheld under L. S. A. R. S. Sec. 14:103.1 (the same statute under which this conviction was rendered) if the only evidence was that petitioners "were violating a custom that segregated people in waiting rooms." In effect such evidence without more constitutes no evidence of disturbance of the peace, and the conviction falls under the rule of *Thompson* v. *Louisville*, 362 US 199. See also

Wright v. *Georgia*, 373 US 284. As much as the waiting room of an interstate bus station, the reading room of a public library is clearly an area in which segregation can not be enforced. See *Mayor and City Council of Baltimore City* v. *Dawson*, 350 US 877; *Holmes* v. *Atlanta*, 350 US 879; *Gayle* v. *Browder*, 352 US 903; *New Orleans City Park Improvement Asso.* v. *Detiege*, 358 US 54.

The sole ground for the District Court's decision was that petitioners, who were Negroes, chose to remain quietly in the public area of the library after being asked to leave (T. 125). The record is bare of proof of any activity which supports a finding that there was any other element of the crime charged, and the District Court makes no such finding. Yet even R. S. 14:103.1 requires proof of an intent to provoke a breach of the peace or acts "under circumstances such that a breach of the peace may be occasioned." The mere assertion that the Regional Librarian felt "disturbed" by the presence of Negroes in the branch library thereto reserved for white persons can not support such a finding. *Wright* v. *Georgia*, 373 US 284, 292-293.

B. The Elements Necessary to Establish a Breach of the Peace Under Louisiana Law Were Carefully Analyzed by This Court in *Garner* v. *Louisiana*, 368 US 157, 82 S. Ct. 248

In *Garner* this Court found "the records barren of any evidence that would support a finding that petitioners' conduct would even 'foreseeably' have disturbed the public." 368 US 157, 166. No issue as to the right of petitioners to seek advice in the public library can exist. Accordingly the issue raises no questions of trespass and is that much

sharper as to the illegality of the arrest and the subsequent conviction.

At the time of the arrests, there were in the library only the five petitioners, two members of the library staff, the Sheriff and two or more deputies (T. 89). No evidence tending to show likelihood of any disturbance of any kind (T. 102-103) was offered. No one exhibited any concern or agitation. There was no noise—the only conversation appeared to be that resulting from the statements of the librarians and the Sheriff and the answers of one petitioner to their questions (T. 62, 96-97). Not even the barest indications of an imminent breach of the peace were present. *Cantwell* v. *Connecticut,* 310 US 296. The Sheriff testified flatly that the sole element constituting grounds for the arrest of the petitioners was their refusal to leave when ordered to do so by him (T. 95). No ascertainable reason for demanding that petitioners leave the library exists (other than their color), and no reason in law or facts exists for their subsequent arrest.

C. The Louisiana Statute as Applied to These Petitioners Was Vague, Uncertain and Indefinite

Were this Court to assume, *arguendo,* that Sec. 14:103.1, in requiring only that an accused's conduct take place "under circumstances such that a breach may be occasioned thereby," removes the necessity of determining that such conduct could "foreseeably disturb or alarm the public," it might be argued that even though the facts here do not meet the standards enunciated in *Garner* v. *Louisiana,* the new statute's less rigorous standards have been met. To accept this argument would in effect admit that the new

statute fails to specify any ascertainable standard of criminality. Read in this manner, Sec. 14:103.1 would place upon the ordinary citizen the burden of guessing whether a breach of peace might be occasioned by any given set of circumstances, regardless of whether such result is reasonably foreseeable at the time. Some spectators to one's presence, timid souls, might be easily alarmed; others, heartier by nature, might not become apprehensive so quickly at the sight of a Negro in a "white only" library. To require one to speculate as to consequences of one's presence is to place one at the mercy of irrationality and deprive one of life, liberty and property without due process of law and to place speech and its free exercise, in the tender hands of the know—nothing. See *Lanzetta* v. *New Jersey*, 306 US 451, 453; *United States* v. *L. Cohen Grocery*, 225 US 81, 89; *Connally* v. *General Construction Co.*, 269 US 385, 591.

By enacting Sec. 14:103.1 the State of Louisiana has attempted to abandon the fixing of any standard of criminality. Where a statute so vaguely worded is used to punish conduct—such as the use by persons of public facilities to which they have a constitutionally protected right—the statute must be held unconstitutionally vague, uncertain and indefinite. *Wright* v. *Georgia*, 373 US 284, 293; *Winters* v. *New York*, 333 US 507.

POINT II

The convictions below constitute *de facto* enforcement of racial segregation in violation of Constitutional guarantees of equal protection of the laws and statutory guarantees of freedom from punishment for exercising rights to non-segregated use of facilities.

The evidence below clearly delineates the pattern of segregation which characterized the operations of the Audubon Regional Library (T. 63, 94, 110-111, 121), elaborate rules regarding the correct "point of service" for users of the library effectively segregated Negroes to the "Blue Bookmobile" (T. 77, 83, 86, 88) were in effect. Only persons registered at a specified "point of service" were afforded access to browsing and reference shelves and other reading room facilities at such "point of service" (T. 82-83, 104-106). Registration cards issued at the Blue Bookmobile were stamped with the word "Negro" and white persons were not registered there (T. 120-121).

Against this pattern of segregation of facilities the arrest and conviction of the petitioners takes on added significance.* The Constitution of the United States forbids enforcement of segregation of public facilities. *Brown* v. *Board of Education*, 347 US 483, 495. To continue the effects of segregation through the use, by public officials, of vaguely worded statutes can only undermine the substance of the holdings of this Court supportive of constitutional guarantees to equal protection of the laws.

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* Interestingly, the Trial Court claimed this trial was a simple "breach of peace" case (T. 83) with no segregation overtones; this after the District Attorney spent the first 58 pages attempting to show CORE's involvement.

Before us we have a record making clear that the conviction of petitioners had as its primary purpose the deterrence of Negroes from using the "white" library facilities theretofore denied to them. Such a purpose, without citation, is clearly in conflict with the Constitution. Absent a showing of independent criminal activity, the convictions constitute an unconstitutional attempt to enforce segregation by the State of Louisiana and accordingly should not be allowed to stand. See *Garner* v. *Louisiana*, 368 US 157, 181.

POINT III

Petitioners having presented themselves peacefully, the convictions below constitute a denial of petitioners' rights of freedom of expression and assembly and constitute a denial of the right to redress a public grievance.

The evidence below shows that petitioners were not only engaged in an attempt to seek to use the public facilities of the Audubon Regional Library, but that they were also engaged quietly in demonstrating against and protesting the illegal segregation policies and practices of that library and thereby to seek the correction thereof (T. 43-48, 53-55, 90-91, 108). Indeed, the State's case appeared to be predicated on the theory that this activity alone constituted a material element of the criminal activity charged (T. 28-31). A conviction based on such grounds would clearly be in conflict with the Due Process Clause of the Fourteenth Amendment as it guarantees the First Amendment protection of freedom of expression and assembly. *Edwards* v. *South Carolina*, 372 US 229; *Garner* v. *Louisiana*, 368 US 157, 201-204 (concurring opinion); *NAACP* v. *Alabama*, 357 US 449, 461.

POINT IV

Had these acts occurred on or after July 2, 1964, arrests therefore would have been improper under Title III of the 1964 Civil Rights Act; accordingly the convictions should be abated.

In seeking to use the public reading room and other facilities of the Audubon Regional Library on a non-discriminatory and non-segregated basis, petitioners were engaging in an activity which would be protected under the Civil Rights Act of 1964 had it been in effect. Accordingly, at this time, the convictions are in conflict with the provisions of that Act (Title III) and the prosecutions should be abated, the judgment vacated and the charges dismissed. *Hamm* v. *Rock Hill*, — US — (No. 2 October Term 1964), *Bell* v. *Maryland*, 378 US 226, 84 S. Ct. 1815.

The acts complained of were certainly not evil in themselves, but at worst *arguendo*, merely wrongful because of the official maintenance of segregation and upholding of such practice by the usage of the White community. Since national policy on the use of public facilities is made clear beyond a peradventure by Title III, and since this application to this Court is part of the procedure on appeal of this case, the judgments of conviction are not yet final and accordingly such judgments should be abated and the bills of information dismissed. That the convictions were procured under state statutes by state courts is of little interest since we are here concerned with national policy protecting the peaceful use (as is the fact here) of public facilities.

CONCLUSION

The conviction of petitioners below is unsupported by any evidence and was made pursuant to a statute unconstitutionally vague and uncertain. The conviction represents an attempt to use State power to enforce illegal racial segregation and denies petitioners their rights to the freedoms of expression and assembly. For all of these reasons the conviction and the decree of the Supreme Court of Louisiana upholding the conviction constitute state court decisions of substantial federal questions which are not in accord with applicable decisions of this Court.

It is respectfully submitted that the petition should be granted.

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LOUIS BERRY.

Certificate

I, the undersigned, hereby certify that I have this day mailed, postage prepaid, copies of the foregoing petition to Honorable Jack Gremilion and the Honorable Richard Kilbourne, attorneys for Respondent, at their usual business addresses.

Dated at New York, New York, this 31st day of December, 1964.

CARL RACHLIN

APPENDIX A

SUPREME COURT OF LOUISIANA

New Orleans, 70112

No. 47,496 October 26, 1964

State of Louisiana

v.

Henry Brown et al

In re: Henry Brown et al applying for writs of mandamus, certiorari and prohibition

---

The application is denied. We find no error in any of the rulings and judgment complained of.

/s/ JBF

/s/ JBH

/s/ FWH

/s/ EHMcC

/s/ WBH

/s/ JWS

/s/ FWS

A TRUE COPY

Clerk's Office
Supreme Court of Louisiana
New Orleans
October 26, 1964

.....
Deputy Clerk

APPENDIX B

Louisiana Revised Statutes of 1950

Title 14 Criminal Law

Chapter I Criminal Code

• • •

Part VI Offenses Affecting the Public Generally

• • •

Sub. Part C Offenders affecting the General Peace and Order

• • •

Section 103 Disturbing the Peace

• • •

103.1 Disturbing the Peace

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or

around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, boat, ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in sub-section (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment. Added Acts 1960, No. 69, § 1.

APPENDIX C

Transcript of Oral Opinion and Judgment of the District Court

BY THE COURT: This is a case, the State of Louisiana vs Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith, and Cleveland McKinzie, in which they are charged with violation of R S 14:103.1 relative to Disturbing the Peace and with the intent of provoking a Breach of the Peace, and under the circumstances such that a Breach of the Peace might be occasioned thereby, they congregated together in the Audubon Library building in the Town of Clinton, Louisiana, and did then and there fail and refuse to leave such premises when ordered to do so by Mrs. Marshall Perkins who was then and there in lawful charge of said premises; and that further, the accused failed to leave said premises when ordered to do so by Arch V. Doughty, the Sheriff of the Parish of East Feliciana.

There has been great effort to make these facts of this case much more difficult than it is, I guess better in keeping with the trends of these times.

The evidence clearly shows that these 5 men went into the Library, that they asked for a book and were served, at least their order was taken. Of course, the Library at that time, being occupied only by two female library-workers, they then asked the parties to leave. This was done twice, and finally the Sheriff again asked them to leave.

Considering these facts and the further Law on the case which has been prescribed by the Legislature of this State, that is: A misdemeanor termed by anyone doing the following acts in a manner disturbing the public. Paragraph one includes the refusal to leave the premises when requested or directed to do so by the owner, lessee, or any employee.

Appendix C

Clearly the evidence shows that these parties did not congregate when they came to the Town of Clinton to the Audubon Parish Library, merely for the purpose of seeking service; that they had a specific motive and a specific intent, and that was, as was shown beyond any reasonable doubt, to refuse to leave the Library even after they had been served, and after they had been requested three times.

If the Court were to say that people who had been entrusted with the control of the property of this State, this Parish which belongs to all of us, were to be able to be flagrantly repudiated with a new system of contempt, and ridicule, certainly we would no longer exist then as a society of men and Law.

The Court will find the 5 defendants guilty as charged. The Law, counsel, allows 24 hours delay before sentencing unless you desire to waive same.

FILED
APR 5 1965
JOHN F. DAVIS, CLERK

No. [redacted] 41

In the Supreme Court of the United States

OCTOBER TERM, 1964

HENRY BROWN, WILLIE KELLY, L. C. BIBBENS, ROBERT SMITH AND CLEVELAND MCKINZIE,

Petitioners,

v.

STATE OF LOUISIANA,

Respondent.

RESPONSE OF THE STATE OF LOUISIANA TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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Attorney for Respondent.

CARROLL BUCK,
1st Assistant
Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

RICHARD KILBOURNE,
District Attorney,
Clinton, Louisiana.

No. 806

In the Supreme Court of the United States

OCTOBER TERM, 1964

HENRY BROWN, WILLIE KELLY, L. C. BIBBENS, ROBERT SMITH AND CLEVELAND MCKINZIE,

Petitioners,

v.

STATE OF LOUISIANA,

Respondent.

RESPONSE OF THE STATE OF LOUISIANA TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

FACTS

On Saturday morning, March 7, 1964, Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie walked into the front room of the building in the Town of Clinton (pop. 1568) used to house the Audubon Regional Library. The front room of the building was used at the time as a lobby where requests for library books were taken. Only one employee, Mrs. Katie Reeves, was on duty at the time. As soon as the men entered, Mrs. Reeves asked if she could help them. (T. 60). Henry Brown handed her a slip of paper on which was written the words, "Wandell Arna, the Story of the Negro, Bontems." As he

handed Mrs. Reeves the paper, Brown said, "I would like to get this book." (T. 65). Mrs. Reeves then consulted the library card catalogue and ascertained that the library did not have such a book. It was later found that no such book existed. Mrs. Reeves then told Brown that the book would be ordered from the State Library and that he would be notified of its arrival. At this point, Brown had taken one of the two chairs in the room and the other four men were standing around him. Mrs. Reeves later testified (T. 60) that since she could not supply the book at that time, she assumed that the five men would leave. When they made no move to leave, Mrs. Reeves repeated what she had said about the book. No further requests for library service were made by any of the men, they simply remained where they were without saying anything. Mrs. Reeves then requested the five men to leave. The five men simply stayed as they were. Mrs. Reeves then called the Librarian, Mrs. Perkins, who was in a rear room of the building. Mrs. Perkins came into the room and requested the five men to leave the building. They still made no move to do so. At this time, the Sheriff came into the room and asked the men to leave. When they still failed to do so, the Sheriff arrested them.

A bill of information was filed by the District Attorney on March 11, 1964 charging the five men with violating R. S. 14:103.1, relative to disturbing the peace, in that, with the intent to provoke a breach of the peace and under circumstances such that a

breach of the peace might be occasioned thereby, they congregated together in the Audubon Library building in the Town of Clinton, Louisiana and did then and there fail and refuse to leave said premises when ordered to do so by Mrs. Marcia Perkins, who was then and there in lawful charge of said premises and did further refuse and fail to leave said premises when ordered to do so by Arch V. Doughty, Sheriff of the Parish of East Feliciana.

On the trial of the case, it was determined that reason for the conduct of the five petitioners which resulted in their arrest, trial and conviction, was a program initiated by an organization known as Congress of Racial Equality to "test" the use of the library facilities in the Town of Clinton by members of the negro race. All of the petitioners are negroes.

ARGUMENT

There is nothing in the record in this case to indicate that defendants were arrested for any reason other than the acts charged to them in the bill of information. When they entered the library and requested a book and their order was taken for the book by the employee on duty, they had used the facilities of the library to the full extent that anyone else could. At this point, the "test" was completed. They had no further lawful business, as far as the record goes, to remain in the library room unless the Court assumes that anyone who wishes to do so can use such facilities to loaf in. The Librarian testified (T. 99) that to her knowledge, no employee of the library had

ever been confronted with a situation such as this where five men, all strangers but Henry Brown, had come into the library and conducted themselves in the manner the petitioners did. Had these men requested any further service or any further reading material, their request would certainly have been given the same courteous treatment which Mrs. Reeves gave them initially. But simply to sit there, staring vacantly, giving no indication whatever of what they wanted or what they might do next was certainly enough to unnerve a woman in the situation Mrs. Reeves was in, particularly when the petitioners remained silent and immobile when Mrs. Reeves requested them to leave.

There is some testimony in the record to the effect that when Mrs. Perkins, the Librarian, requested the petitioners to leave, Henry Brown said, "What about the Constitution?" She replied that they had it at the library. She did not take this as a request for the Constitution. Neither Henry Brown nor any of the other petitioners testified in their defense, so this was never clarified. Evidently, Henry Brown was trying to say that the Constitution gave him the right to conduct himself in the manner he was doing.

This case does not involve any denial or due process or any rights given these petitioners under the Civil Rights Act of 1964. It simply involves whether any group or any person has the right to use a facility such as a public library room as a place in which to loaf or make a nuisance of themselves to the extent that the employees of such a facility or those wishing

to make a bona fide use of it are embarrassed and disturbed. Petitioners were not arrested because they were negroes. They were arrested because they stood and sat around in the library after they had been given all the service that they had requested to the extent that their wishes were made known and refused to leave when their business, as stated by Henry Brown, was completed.

CONCLUSION

Neither the facts nor the statute involved in this case presents any substantial federal question and it is respectfully submitted that the petition should be denied.

JACK P. F. GREMILLION,
Attorney General,
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Baton Rouge, Louisiana.

Attorney for Respondent.

CARROLL BUCK,
1st Assistant
Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

RICHARD KILBOURNE,
District Attorney,
Clinton, Louisiana.

CERTIFICATE

I, the undersigned, hereby certify that I have this day mailed, postage prepaid, copies of the foregoing response to Messrs. Carl Rachlin and Collins, Douglas and Elie, attorneys for Petitioners, at their usual business addresses.

Baton Rouge, Louisiana this_____day of _____, 1965.

Jack P. F. Gremillion

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JOHN F. DAVIS, CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 41

HENRY BROWN, WILLIE KELLY, L. C. BIBBINS, ROBERT SMITH and CLEVELAND McKINZIE,

Petitioners,

vs.

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO SUPREME COURT OF LOUISIANA

BRIEF FOR PETITIONERS

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BRIEF FOR PETITIONERS

Opinions Below

The Louisiana District Court found petitioners guilty, without written opinion. The memorandum opinion of the Supreme Court of Louisiana is unreported and appears in Record, p. 139.

Jurisdiction

The convictions were rendered by the District Court on April 9, 1964. Petitioners' Motion for a New Trial was denied on October 7, 1964. Petitioners' application to the

Supreme Court of the State of Louisiana for Writs of Mandamus, Certiorari and Prohibition was denied by decree of that court made and entered on October 26, 1964. A petition for certiorari was filed in this Court on January 4, 1965. Certiorari was granted on May 3, 1965.

The jurisdiction of this Court in this case is invoked pursuant to Title 28, United States Code, Section 1257 (3).

Constitutional and Statutory Provisions Involved

United States Constitution, Amendment First:

> "Congress shall make no law . . . abridging the freedom of speech . . . or of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Constitution, Amendment Fourteen, Section 1:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Civil Rights Act of 1964, Title III, Designation of Public Facilities:

> "Sec. 301 (a) Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any state or subdivision thereof, other than a public school . . ."

Louisiana Revised Statutes of 1950, Title 14, Section 103.1, Disturbing the Peace:

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts,

or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, boat, ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in sub-section (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process or boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine or not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment. Added Acts 1960, No. 69, §1.

Questions Presented

Petitioners, all residents of East and West Feliciana Parishes, Louisiana, were arrested and convicted on charges of disturbing the peace under a Louisiana statute R. S. 14:103.1 for their failure to vacate a public area of the Audubon Library Building, a library operated by the three parishes of East Feliciana, West Feliciana and St. Helena, jointly, in the Town of Clinton, Louisiana, after being requested to leave by the librarians and by the sheriff. The

evidence showed that petitioners had entered the library to use the facilities available to the public. No evidence that petitioners were loud or boisterous or that any breach of the peace occurred was offered. Evidence was presented, however, showing that petitioners, all Negroes, were asked to leave, although not disorderly, because it was the policy of the library not to permit Negroes to use that building.

Did the arrest and conviction of the petitioners deprive them of rights protected by

(1) The Due Process clause of the Fourteenth Amendment to the Constitution of the United States in that they were convicted without any evidence of the essential elements of the crime;

(2) The Due Process clause of the Fourteenth Amendment in that they were convicted under a statute which, as interpreted, was so vague and indefinite as to afford no ascertainable standard of criminality;

(3) The Due Process and Equal Protection clauses of the Fourteenth Amendment in that their arrests and convictions constituted enforcement of racial segregation;

(4) The First Amendment, as made applicable to the states through the Fourteenth Amendment, in that petitioners' freedom of expression has been abridged;

(5) Title III of the Civil Rights Act of 1964 in that such arrests and convictions constitute an attempt to punish petitioners for exercising their right to be free of discrimination?

Statement of the Case

On March 7, 1964, about 11:30 A. M., petitioners, all Negroes, entered the public reading room of the Audubon Regional Library in the town of Clinton, Louisiana. The library is jointly operated by three Parishes and is supplied, in part, by the Louisiana State Library.

It maintains three branches and two Bookmobiles as its "points of service" (R. 103, 109, 114-115). The Red Bookmobile services the white residents and their schools. The Blue Bookmobile operates in the Negro area and services the Negro residents and their schools (R. 109, 115, 128-129, 137).

To use the library, a person must be a "registered borrower" (R. 111). All Negroes are registered through the Blue Bookmobile by the Negro librarian in charge (R. 128-129, 137-138). A card is then issued with the word "Negro" stamped on it (R. 137). White persons cannot use the Blue Bookmobile to register or check out a book. They are referred to the nearest Branch or to the Red Bookmobile (R. 137-138).

At no time can a Negro pick up (R. 95, 98) or return (R. 112, 114, 116) a book at the Audubon Regional Library. Petitioner Brown was told that his book would be mailed or he could pick it up at the Blue Bookmobile (R. 95, 98). To return the book, he was to mail it or bring it to the Blue Bookmobile (R. 112, 114, 116).

Never before March 7, 1964 had a Negro been seen at the Audubon Regional Library, although it has been in existence since 1961 (R. 102). Neither the librarian (R.

120) nor the sheriff (R. 132) had ever seen a Negro enter the library.

After petitioners entered the library, Petitioner Brown requested a book. Brown was told by the librarian that the book was not available, and she would have to be sent for it (R. 95).

Moments later, petitioners were told to leave. The Assistant Librarian "assumed" they would leave because she did not have the book (R. 96). After a second demand, she called in the Regional Librarian (R. 103) who also told petitioners to leave. Petitioners, in response to these requests, remained in the reading room (R. 96, 121). They said nothing and did nothing (R. 96). At no time were they noisy or boisterous (R. 97, 121).

Testifying that she was "disturbed" by the presence of petitioners (R. 126-127), the Regional Librarian offered no evidence as to what it was that petitioners did to cause her to be disturbed. In fact, no one objected to any activity of petitioners other than their presence in the reading room.

About 9:00 that morning, the sheriff was notified by his deputy that "something" was going to take place at the library (R. 117-118). He was not called, however, by either librarian or anyone at the library (R. 107, 131). All morning the sheriff watched and waited for petitioners, until he finally saw them come down the street (R. 117) and enter into the library (R. 118). He immediately called his deputies (R. 118-119, 131) and dispatched them to the library

building. The sheriff stated that he and his deputies arrived there approximately five minutes after petitioners (R. 131).

Petitioners were seeking by their acts, the sheriff testified, to effect a change of the policy of segregation in the Audubon Regional Library (R. 118). Prior to arresting petitioners, however, the Sheriff did not directly ascertain whether petitioners intended to use the facilities at the library building (R. 122-123). Only after petitioners were taken to jail did the Sheriff ask them why they were at the library (R. 118). Before this time, he had no conversation with petitioners (R. 120).

After the librarians told the Sheriff they had ordered petitioners to leave the building, the Sheriff also demanded that they leave (R. 116). He presented them with the choice of leaving the building or being arrested (R. 117, 121).

When petitioners indicated they would not leave, they were arrested (R. 117). They were not arrested, however, because their actions were considered a demonstration (R. 120). Having made no noise (R. 97, 121), their disturbance consisted solely of their refusal to leave the library (R. 121). Their subsequent arrest was entirely due to petitioners' refusal to obey the demands of the librarians or the Sheriff.

A Bill of Information was filed by the District Attorney on March 11, 1964, and petitioners appeared for trial on March 24, 1964. The trial was completed on April 9, 1964.

At the outset of the trial petitioners moved to quash the Bill of Information on the grounds (a) that the Bill did not inform petitioners of the crimes of which they were ac-

cused, (b) that the statute referred to therein was unconstitutional for vagueness, (c) that the statute and Bill fail to allege criminal or specific intent, (d) that the Bill and prosecution violate the First and Fourteenth Amendments to the Constitution of the United States by depriving petitioners of freedom of assembly and equal protection of the laws, and (e) that the statute and Bill represent an unlawful delegation of legislative powers.

Petitioners' Motion to Quash was denied, as was petitioners' demand for certain particulars regarding the elements of the offense charged by the State (R. 15-16, 11-12, 69).

The District Court found all petitioners guilty as charged (R. 139). On July 14, 1964 petitioners timely moved for a new trial on the ground that no evidence existed in the record to support the judgment. This motion was denied on the same day and the petitioners were thereupon sentenced as follows:

> Petitioner Brown: $150 and costs, and in default of payment of the fine, 90 days in the parish jail.
>
> Petitioners Kelly, Bibbins, Smith and McKinzie; $35 and costs, and in default of payment of the fine, 15 days in the parish jail. (R. 3)

On July 28, 1964 nine separate Bills of Exceptions were filed relating to rulings of the District Court, including the denials of the demands for particulars, the Motion to Quash and the Motions for a New Trial (R. 8-32). Per curiam opinions with regard to the nine Bills of Exceptions were rendered by the District Court on October 7, 1964 (R. 8-32).

Pursuant to a Notice of Application for Supervisory Writs filed on July 28, 1964, petitioners sought review by

the Supreme Court of Louisiana of the judgment of conviction and sentence (R. 8-32). Under Louisiana law no direct appeal procedure was available, since the fines imposed were less than $300 and the jail terms less than six months. Writs of mandamus, certiorari and prohibition were sought under the general supervisory jurisdiction of the Supreme Court of Louisiana (Louisiana Constitution, Article VII, Section 10) and in accordance with Rule 12 of the Louisiana Supreme Court Rules.

On October 26, 1964, the Supreme Court of Louisiana unanimously denied petitioners' applications for writs of mandamus, certiorari and prohibition, holding that there was no error in any of the rulings and judgment of the District Court (R. 32). On October 28, 1964 bench warrants were issued by the District Court to effect execution of the sentences imposed upon petitioners. The District Court then adjourned until November 2, 1964.

On October 28, 1964 petitioners filed a petition with the Supreme Court of Louisiana for stay of execution of sentences, requesting 90 days to enable petitioners to file a Petition for Writ of Certiorari with this Court (R. 33-36). Initially petitioners were refused the stay, being advised that such stays would thereafter be issued only by the District Court. Petitioners Smith and McKinzie were arrested pursuant to the District Court's bench warrants on October 30, 1964.

On November 2, 1964 petitioners applied to the District Court for a stay of execution pending preparation of their petition to this Court for a Writ of Certiorari. The application for a stay was denied that same day (R. 46). On

November 4, 1964 (following the Election Day holiday when the courts were closed) petitioners again applied to the Supreme Court of Louisiana for a stay, or alternatively for writs of habeas corpus and mandamus (R. 37-44). At that point the petitioners' first petition, which had been filed on October 28, 1964, was granted, but the stay of execution of the sentences was limited to a period of thirty days from November 4th. The stay was subsequently extended for an additional thirty days, expiring on January 4, 1965.

How Federal Questions Were Raised

The Federal questions presented here were raised in the District Court by written Motion to Quash (R. 12-14) and written Motion for a New Trial (R. 31-32) and by written Bills of Exceptions to the denial of such motions (R. 8-32), and in the Supreme Court of Louisiana by application for Writs of Mandamus, Certiorari and Prohibition (R. 3-6).

Petitioners accordingly raised their Federal claims at the earliest opportunity and renewed them at each stage of the proceedings below.

Reasons for Granting the Writ

The convictions below conflict with applicable decisions of this Court on important constitutional issues. If the conviction be upheld on the facts in this record, statutes such as we have before us can effectively be utilized to circumvent and nullify constitutional rights reaffirmed by the Civil Rights Act of 1964.

ARGUMENT

POINT I

The convictions below violate Constitutional guarantee of due process of law.

A. The Convictions Below Were Totally Unsupported by the Evidence

The material facts of this case virtually duplicate those in *Taylor* v. *Louisiana*, 370 US 154, 82 S. Ct. 1188 (1962), in which this Court held that a conviction of disturbing the peace could not be upheld under L. S. A. R. S. Sec. 14:103.1 (the same statute under which this conviction was rendered) if the only evidence was that petitioners "were violating a custom that segregated people in waiting rooms". The "mere presence" of Negroes in a white waiting room is not likely to give rise to a breach of the peace. 370 US 154, 155. In effect such evidence without more constitutes no evidence of disturbance of the peace, and the conviction falls under the rules of *Thompson* v. *Louisville*, 362 US 199, 204, 206, where the court held that a conviction in a state court must be set aside "if there is no support for these convictions" or "the record is entirely lacking in evidence to support any of the charges," or is "without evidence of his guilt." Not present here is a statement common to many similar trials that the on-looking whites seemed disturbed.

As much as the waiting room of an interstate bus station, the reading room of a public library is clearly an area in which segregation cannot be enforced. See also *Wright* v. *Georgia*, 373, US 284, where six Negro petitioners were peacefully playing basketball in a public park, and the

court found no evidence of any activity which might be thought to violate a breach of the peace statute; *Mayor and City Council of Baltimore City* v. *Dawson,* 350 US 877, where city could no longer enforce racial segregation in the enjoyment of public beaches and bathhouses; *Holmes* v. *Atlanta,* 350 US 879, where city was restrained from denying Negroes the right to use the public golf course; *Gayle* v. *Browder,* 352 US 903, where city could no longer require segregation on motor buses; *New Orleans City Park Improvement Asso.* v. *Detiege,* 358 US 54 where municipality was enjoined from denying Negroes use of the park facilities.

No ground for the District Court's decision other than that petitioners, Negroes, chose to remain quietly in the public area of the library after being asked to leave (R. 140). The record is bare of proof of any activity which supports a finding that there was any other element of the crime charged. The entire findings of fact by the District Court are as follows:

> "The evidence clearly shows that these 5 men went into the library, that they asked for a book and were served, at least their order was taken. Of course, the library at that time, being occupied only by two female library-workers, they then asked the parties to leave. This was done twice, and finally the Sheriff again asked them to leave . . ."
>
> "Clearly the evidence shows that these parties did not congregate when they came to the town of Clinton to the Audubon Parish Library, merely for the purpose of seeking service; that they had a specific motive and a specific intent, and that was, as was shown beyond any reasonable doubt, to refuse to

leave the library even after they had been served, and after they had been requested three times." (R. 140)

Louisiana statute 14:103.1 requires proof of an intent to provoke a breach of the peace or acts "under circumstances such that a breach of the peace may be occasioned." The Sheriff, by his own testimony, stated that he never ascertained the facts regarding either element of the crime as defined by the statute (R. 119-121). He did not know of his own knowledge nor did anyone communicate to him facts indicating whether or not petitioners intended to provoke a breach of the peace or that a breach of the peace might be occasioned by their conduct. No proof of an intent to disturb the peace can be inferred from the fact that petitioners may be members of the Congress of Racial Equality, an organization to test and eliminate racial discrimination. See *Taylor* v. *Louisiana,* 370 US 154, 156 (1962), where evidence was offered to show that the demonstration was part of a "preconceived plan" and this Court stated that such evidence had no bearing on whether there could be a conviction for disturbing the peace. The mere assertion that the Regional Librarian felt "disturbed" by the presence of Negroes in the branch library therefore reserved for white persons can not support such a finding. *Wright* v. *Georgia,* 373 US 284, 292-293 and *Taylor* v. *Louisiana,* 370 US 154.

B. The Elements Necessary to Establish a Breach of the Peace Under Louisiana Law Were Carefully Analyzed by This Court in *Garner v. Louisiana,* 368 US 157, 82 S. Ct. 248

In *Garner* Negroes took seats at lunch counters where only white persons customarily were served, and they re-

mained quietly in their seats after being told they could not be served there. This Court found "The records barren of any evidence that would support a finding that petitioners' conduct would even 'foreseeably' have disturbed the public." 368 US 157, 166. No issue was to the right of petitioners to seek service in the public library can exist. Accordingly the issue raises no questions of trespass and is that much sharper as to the illegality of the arrest and the subsequent conviction.

At the time of the arrests, there were in the library only the five petitioners, two members of the library staff, the Sheriff and two or more deputies (R. 116). No evidence tending to show likelihood of any disturbance of any kind (R. 126-127) was offered. No one exhibited any concern or agitation. There was no noise—the only conversation appeared to be that resulting from the statements of the librarians and the Sheriff and the answers of one petitioner to their questions (R. 97, 121-122). Not even the barest indications of an imminent breach of the peace were present. *Cantwell* v. *Connecticut,* 310 US 296. The Sheriff testified flatly that the sole element constituting grounds for the arrest of the petitioners was their refusal to leave when ordered to do so by him (R. 121). No ascertainable reason for demanding that petitioners leave the library exists (other than their color), and no reason in law or facts existed for their subsequent arrest.

C. The Louisiana Statute as Applied to These Petitioners Was Vague, Uncertain and Indefinite

Were this Court to assume, *arguendo,* that Sec. 14:103.1, in requiring only that an accused's conduct take place "under circumstances such that a breach may be occasioned

thereby," removes the necessity of determining that such conduct could "foreseeably disturb or alarm the public," it might be argued that even though the facts here do not meet the standards enunciated in *Garner* v. *Louisiana*, the new statute's less rigorous standards have been met. But to accept this argument would in effect admit that the new statute fails to specify any ascertainable standard of criminality. Read in this manner, Sec. 14:103.1 placed upon the ordinary citizen the burden of guessing whether a breach of peace might be occasioned by any given set of circumstances, regardless of whether such result is reasonably foreseeable at the time. Some spectators to one's presence, timid souls, might be easily alarmed; others, heartier by nature, might not become apprehensive so quickly at the sight of a Negro in a "white only" library. To require one to speculate as to the consequences of one's presence is to place one at the mercy of irrationality and deprive one of life, liberty and property without due process of law. Speech, and its free exercise, is rendered into the tender hands of the know-nothing. See *Lanzetta* v. *New Jersey*, 306 US 541, 543; *United States* v. *L. Cohen Grocery*, 225 US 81, 89; *Connally* v. *General Construction Co.*, 269 US 385, 591. In no way can the facts in this case be compared with *Cox* v. *Louisiana*, 379 US 536. Nor is there any question here of the reasonable nature of any regulation directing the time and place for the use of these facilities. So far as these appellants are concerned, Negroes all, the ban was absolute.

By enacting Sec. 14:103.1 the State of Louisiana has attempted to abandon the fixing of any standard of criminality. Where a statute so vaguely worded is used to punish

conduct—such as the use by persons of public facilities to which they have a constitutionally protected right—the statute must be held unconstitutionally vague, uncertain and indefinite. *Wright* v. *Georgia*, 373 US 284, 293; *Winters* v. *New York*, 333 US 507.

POINT II

The convictions below constitute enforcement of racial segregation in violation of Constitutional guarantees of equal protection of the laws and statutory guarantees of freedom from punishment for exercising rights to non-segregated use of facilities.

The evidence below clearly delineates the pattern of seggregation which characterized the operations of the Audubon Regional Library (R. 98, 120, 132, 137). Elaborate rules regarding the correct "point of service" for users of the library effectively segregated Negroes to the "Blue Bookmobile" (R. 109-110, 112, 115-116). Only persons registered at a specified "point of service" were afforded access to browsing and reference shelves and other reading room facilities at such "point of service" (R. 111-112, 128-129). Registration cards issued at the Blue Bookmobile were stamped with the word "Negro" and white persons were not registered there (R. 137).

Against this pattern of segregation of facilities the arrest and conviction of the petitioners takes on added significance.* The Constitution of the United States forbids

* Interestingly, the Trial Court claimed this trial was a simple "breach of peace" case (R. 112) with no segregation overtones; nevertheless the District Attorney expended the first 58 pages of the transcript in an attempt to show CORE's involvement.

enforcement of segregation of public facilities. *Brown* v. *Board of Education,* 347 US 483, 495. To continue the effects of segregation through the use, by public officials, of vaguely worded statutes can only undermine the substance of the holdings of this Court supportive of constitutional guarantees to equal protection of the laws.

Before us we have a record making clear that the conviction of petitioners had as its primary purpose the deterrence of Negroes from using the "white" library facilities theretofore denied to them. Such a purpose is clearly in conflict with the Constitution. Absent a showing of independent criminal activity, the convictions constitute an unconstitutional attempt to enforce segregation by the State of Louisiana and accordingly should not be allowed to stand. See *Garner* v. *Louisiana,* 368 US 157, 181.

POINT III

Petitioners having presented themselves peacefully, the convictions below constitute a denial of petitioners' rights of freedom of expression and assembly and constitute a denial of the right to redress a public grievance.

The evidence below shows that petitioners were not only engaged in an attempt to seek to use the public utilities of the Audubon Regional Library, but that they were also engaged quietly in protesting the illegal segregation policies and practices of that library and thereby to seek the correction thereof (R. 85-88, 91-92, 117-118, 130). Indeed, the State's case appeared to be predicated on the theory that this activity alone constituted a material element of the criminal activity charged (R. 77-78). A conviction based

on such grounds would clearly be in conflict with the Due Process Clause of the Fourteenth Amendment as it guarantees the First Amendment protection of freedom of expression and assembly. *Edwards* v. *South Carolina,* 372 US 229; *Garner* v. *Louisiana,* 368 US 157, 201-204 (concurring opinion); *NAACP* v. *Alabama,* 357 US 449, 461.

To have left the library at the direction of the Sheriff would have meant succumbing to an illegal police order. While there are risks attendant upon disobeying a police order, to make it a crime to disobey any police order no matter how wrongful, not only is to give in to injustice, but to participate in the installation of a police state. It is only in the police state that the refusal to obey a police order is a crime by itself. No act, even remotely improper exists before us except the refusal to obey the Sheriff, the very Sheriff who came to the library either to expel them, or arrest them. What honorable alternative does a man have at this juncture? If a man cannot stand peacefully in a public library without risking arrest where then is he safe? The arrest here had nothing to do with the maintenance of law and order, but occurred merely to retain the old order and to continue the denial of the constitution of the United States to Negroes in Louisiana.

POINT IV

Had these acts occurred on or after July 2, 1964, arrests therefore would have been improper under Title III of the 1964 Civil Rights Act; accordingly the convictions should be abated.

In seeking to use the public reading room and other facilities of the Audubon Regional Library on a non-discriminatory and non-segregated basis, petitioners were engaging in an activity which would be protected under the Civil Rights Act of 1964 had it been in effect. Accordingly, at this time, the convictions are in conflict with the provisions of that Act (Title III) and the prosecutions should be abated, the judgment vacated and the charges dismissed. *Hamm* v. *Rock Hill,* 379 US 306; *Bell* v. *Maryland,* 378 US 226, 84 S. Ct. 1815.

The acts complained of were certainly not evil in themselves, but at worst *arguendo,* merely wrongful because of the official maintenance of segregation and upholding of such practice by the usage of the white community. Since national policy on the use of public facilities is made clear beyond a peradventure by Title III, and since this application to this Court is part of the procedure on appeal of this case, the judgments of conviction are not yet final and accordingly such judgments should be abated and the bills of information dismissed. That the convictions were procured under state statutes by state courts is of little interest since we are here concerned with national policy protecting the peaceful use (as is the fact here) of public facilities.

CONCLUSION

The conviction of petitioners below is unsupported by any evidence and was made pursuant to a statute unconstitutionally vague and uncertain. The conviction represents an attempt to use State power to enforce illegal racial segregation and denies petitioners their rights to the freedoms of expression and assembly. For all of these reasons the conviction and the decree of the Supreme Court of Louisiana upholding the conviction should be reversed.

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Certificate

I, the undersigned, hereby certify that I have this day mailed, postage prepaid, copies of the foregoing brief to the Honorable Jack Gremilion, Attorney General of the State of Louisiana, and the Honorable Richard Kilbourne, attorneys for the Respondent, at their usual business addresses.

Dated at New York, New York, this 23rd day of August, 1965.

CARL RACHLIN

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No. 41

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In the Supreme Court of the United States

OCTOBER TERM, 1965

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STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE RESPONDENT

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No. 41

In the Supreme Court of the United States

OCTOBER TERM, 1965

HENRY BROWN, WILLIE KELLY, L. C. BIBBENS, ROBERT SMITH AND CLEVELAND MCKINZIE,
Petitioners,

v.

STATE OF LOUISIANA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE RESPONDENT

STATEMENT

On Saturday morning, March 7, 1964, Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie walked into the front room of the building in the Town of Clinton (pop. 1568) used to house the Audubon Regional Library. The front room of the building was used at the time as a lobby where requests for library books were taken. Only one employee, Mrs. Katie Reeves, was on duty at the time. As soon as the men entered, Mrs. Reeves asked if she could help them. (T. 95). Henry Brown handed her a slip of paper on which was written the words, "Wandell Arna, the Story of the Negro, Bontems." As he handed Mrs. Reeves the paper, Brown said, "I

would like to get this book." (T. 100). Mrs. Reeves then consulted the library card catalogue and ascertained that the library did not have such a book. Mrs. Reeves then told Brown that the book would be ordered from the State Library and that he would be notified of its arrival. It was later found that no such book existed. At this point, Brown had taken one of the two chairs in the room and the other four men were standing around him. Mrs. Reeves later testified (T. 96) that since she could not supply the book at that time, she assumed that the five men would leave. When they made no move to leave, Mrs. Reeves repeated what she had said about the book. No further requests for library service were made by any of the men, they simply remained where they were without saying anything. Mrs. Reeves then requested the five men to leave. The five men simply stayed as they were. Mrs. Reeves then called the Librarian, Mrs. Perkins, who was in a rear room of the building. Mrs. Perkins came into the room and requested the five men to leave the building. They still made no move to do so. At this time, the Sheriff came into the room and asked the men to leave. When they still failed to do so, the Sheriff arrested them.

A bill of information was filed by the District Attorney on March 11, 1964 charging the five men with violating R.S. 14:103.1, relative to disturbing the peace, in that, with the intent to provoke a breach of the peace and under circumstances such that a breach of the peace might be occasioned thereby, they congregated together in the Audubon Library Build-

ing in the Town of Clinton, Louisiana and did then and there fail and refuse to leave said premises when ordered to do so by Mrs. Marcia Perkins, who was then and there in lawful charge of said premises and did further refuse and fail to leave said premises when ordered to do so by Arch V. Doughty, Sheriff of the Parish of East Feliciana.

On the trial of the case, it was determined that reason for the conduct of the five petitioners which resulted in their arrest, trial and conviction, was a program initiated by an organization known as Congress of Racial Equality to "test" the use of the Library facilities in the Town of Clinton by members of the negro race. All of the petitioners are negroes.

ARGUMENT

May It Please The Court:

The petitioners have endeavored to assert that their constitutional rights have been invaded. Whereas, the State contends that this is merely a prosecution of a misdemeanor involving, purely and simply, a disturbance and breach of the peace, and does not involve a denial of due process or of any rights of the petitioners under the Constitution of the United States. The petitioners have tried to contend that the enforcement of the criminal statute (L.S.A. R.S. 14:103.1) is an effort by the State to further and maintain segregation of the races in Louisiana. Whereas, the State contends that the issue is simply whether any person, or group of persons, have any right to use a facility such as a public library room as a place in which to

loiter or create a nuisance to the extent that the employees of such a facility, or those wishing to make a bona fide use of it, are embarrassed and disturbed.

Upon the trial of the case it was proved that the petitioners were guilty of the misdemeanor as charged. Through competent testimony it was shown that petitioners remained in the library with the specific intent to provoke a breach of the peace, or under circumstances such that a breach of the peace might have been occasioned thereby. Petitioners also failed to *move on* when ordered to do so by a law enforcement officer. (T. 116).

Also, we wish to point out to the Court that (as shown on the trial of this case) the facts and circumstances of this case abundantly show that this statute (L.S.A. R.S. 14:103.1) was administered impartially against the petitioners, and that it was not a means of maintaining segregation. These facts and circumstances are as follows:

1) Petitioners *were served* by the librarian with the same courtesy afforded any other borrower of the library. (T. 108).

2) It was indicated that petitioners had the same privileges as any other resident of the area, such as obtaining books and browsing in the library. (T. 111-112)

3) The evidence indicates that the complete facilities were made available to the petitioners, and only after their use of the library was completed were they asked to leave. No one, whether white or Negro, has the right to use

such facilities as a place in which to loaf or loiter.

Taylor v. Louisiana, 370 US 154, 82 S. Ct. 1188 (1962), strongly relied upon by petitioners, is inapplicable to the instant case. In the Taylor case the defendants were endeavoring to transact lawful business in the bus terminal when they were arrested; but in this case the petitioners had completed their transactions with the librarian and therefore had no reason to loiter about the premises. The petitioners acted in an exceedingly unusual manner for people wanting to be served at the library; their conduct was such as would cause much apprehension to the occupants of the library, that is, Mrs. Reeves and Mrs. Perkins, especially since they refused to leave when asked to do so. (T. 124, 125). Since the petitioners no longer had any lawful reason to remain on the premises they were required to heed the sheriff's order to *move on*. "The question of whether certain conduct constitutes a breach of the peace depends largely upon the facts of each particular case and the circumstances surrounding the incident. An act which would be lawful in some circumstances may amount to a breach of peace if done under other circumstances." (*Abernathy v. Alabama*, 155 So.2d 586). We think that it could not conceivably be said that petitioners did not have knowledge that their conduct was calculated to incite a breach of the peace.

A regulation similar to R.S. 14:103.1 was discussed in *Benson v. City of Norfolk*, 163 VA. 1037, 177 S.E. 222. In that case the defendant's conviction

for failing to "move on" was affirmed. The Court felt that it was vital to the welfare of a community that police officers have reasonable authority and discretion in requiring persons to *move on* if they are loitering or standing on public property. (See also, *Tinsley v. City of Richmond*, 202 Va. 707, 119 S.E. 2d 488).

Likewise, in *Feiner v. New York*, 340 US 315, 71 S. Ct. 303, it was held that a New York statute, similar to that of the Louisiana statute, was constitutional and did not encroach upon any constitutional rights under the Fourteenth Amendment or Bill of Rights of the United States Constitution. The New York statute involved in the Feiner case reads as follows:

> Section 722. Any person who *with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned*, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> (3) *Congregates with others* on a public street *and refuses to move on when ordered by the police.* (Emphasis supplied)

Language used by the New York Courts in interpretating the New York statute is appropriate to the case at bar, thus:

> "They must 'move on' when a police officer so directs for the purpose of avoiding possible disorder that otherwise might ensue. The legislature has provided that failure to obey such directions in itself is disorderly conduct. . ."
>
> (*People v. Galpern*, 259 N.Y. 279, 181 N.E. 572)

> "It is not prerequisite to arrest on a charge of disorderly conduct (disturbing the peace) that a breach of the peace shall have actually occurred." (*People v. Hipple*, 263 NY 242, 244, 188 N.E. 725, 726)
>
> "Defendants' course, (of conduct) therefore, was calculated to occasion a breach of the peace. (*People v. Thorpe*, 198 Misc. 462, 101 NY S (2d) 986, 990).

The evidence presented on the trial of the case at bar indicated that the petitioners, after they had completed their use of the library facilities, lingered in the library for the sole purpose of creating an incident and "disturbing" the two librarians or other persons who might use the library. It was a planned affair with the sheriff being notified that something was going to happen at the library. (T. 117 and 131). Due respect for law and the authority of officers of the law should have motivated the petitioners to obey the request of the officer which was neither arbitrary nor capricious.

> "Whenever one person declares that he or she will be the sole judge of whether or not the law will be respected and obeyed, anarchy has found its roots in a nation dedicated to lawful authority." (*People v. Lo Vecchio*, 185 Misc. 197, 56 NY S (2d) 354)

CONCLUSION

For the foregoing reasons, the conviction of petitioners should be sustained as the proven facts demonstrate beyond a shadow of a doubt that these petitioners were guilty by their failure to obey the

lawful orders of the police under a lawful statute. Petitioners have shown no respect for law and the authority of officers of the law; nor have they shown any interest in the peace and tranquility of their community. In essence, the petitioners declared that they would be the sole judge of whether or not the law would be respected and obeyed.

Respectfully submitted,

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CERTIFICATE

I, the undersigned, hereby certify that I have this day mailed, postage prepaid, copies of the foregoing Brief to Messrs. Carl Rachlin and Collins, Douglas and Elie, attorneys for Petitioners, at their usual business addresses.

Baton Rouge, Louisiana this_____ day of _____, 1965.

Jack P. F. Gremillion

B-309, 8-65

SUPREME COURT OF THE UNITED STATES

No. 41.—October Term, 1965.

Henry Brown et al., Petitioners, *v.* State of Louisiana.	On Writ of Certiorari to the Supreme Court of Louisiana.

[February 23, 1966.]

Mr. Justice Fortas announced the judgment of the Court and an opinion in which The Chief Justice and Mr. Justice Douglas join.

This is the fourth time in little more than four years that this Court has reviewed convictions by the Louisiana courts for alleged violations, in a civil rights context, of that State's breach of the peace statute. In the three preceding cases the convictions were reversed. *Garner* v. *Louisiana,* 368 U. S. 157, decided in December 1961, involved sit-ins by Negroes at lunch counters catering only to whites. *Taylor* v. *Louisiana,* 370 U. S. 154, decided in June 1962, concerned a sit-in by Negroes in a waiting room at a bus depot, reserved "for whites only." *Cox* v. *Louisiana,* 379 U. S. 536, decided in January 1965, involved the leader of some 2,000 Negroes who demonstrated in the vicinity of a courthouse and jail to protest the arrest of fellow demonstrators. In each of these cases the demonstration was orderly. In each, the purpose of the participants was to protest the denial to Negroes of rights guaranteed them by State and Federal constitutions and to petition their governments for redress of grievances. In none was there evidence that the participants planned or intended disorder. In none were there circumstances which might have led to a breach of the peace chargeable to the protesting participants.[1]

[1] Participants in an orderly demonstration in a public place are not chargeable with the danger, unprovoked except by the fact of

In *Garner* the Court found the record utterly barren of evidence to support convictions under Title 14, Article 103 (7) of the Louisiana Criminal Code, which then defined the crime of "disturbing the peace" in specific detail.[2] The record contained no evidence of boisterous or disorderly actions or of "passive conduct likely to cause a public disturbance." 368 U. S., at 173–174. In *Taylor*, which arose under the Louisiana statute as amended to read in its present form, see p. 6, *infra*, the Court in a *per curiam* opinion set aside the convictions despite evidence of "restlessness" among the white onlookers. Finally, in *Cox*, the Court held that the facts would not permit application of Louisiana's breach of the peace statute, despite the large scale of the demonstrations and the fact that petitioner's speech occasioned "grumbling" on the part of white onlookers. Petitioner

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the constitutionally protected demonstration itself, that their critics might react with disorder or violence. See *Cox* v. *Louisiana*, *supra*, at 551–552; *Wright* v. *Georgia*, 373 U. S. 284, 293; cf. *Terminiello* v. *City of Chicago*, 337 U. S. 1. Compare *Feiner* v. *New York*, 340 U. S. 315, where one speaker was haranguing 75 or 80 "restless" listeners; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568 ("fighting words"); cf. *Niemotko* v. *Maryland*, 340 U. S. 268, 289 (concurring opinion of Frankfurter, J.). See generally on the problem of the "heckler's veto," Kalven, The Negro and the First Amendment, 140–160 (1965).

[2] The statute then read: "Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

"(1) Engaging in a fistic encounter; or

"(2) Using of any unnecessarily loud, offensive, or insulting language; or

"(3) Appearing in an intoxicating condition; or

"(4) Engaging in any act in a violent or tumultuous manner by any three or more persons; or

"(5) Holding of an unlawful assembly; or

"(6) Interruption of any lawful assembly of people; or

"(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

and the demonstrators as a group, though "well behaved," were far from silent, 379 U. S., at 543, 546.[3] As an "additional reason" why the conviction could not be sustained, the Court, citing *Terminiello* v. *City of Chicago*, 337 U. S. 1, and *Edwards* v. *South Carolina*, 372 U. S. 229, held that were the statute to be defined and applied as the Louisiana Supreme Court had done, it would be unconstitutional because the vagueness and breadth of the definition "would allow persons to be punished merely for peacefully expressing unpopular views." 379 U. S., at 551. See *Edwards* v. *South Carolina*, *supra*, at 237.

Since the present case was decided under precisely the statute involved in *Cox* but before our decision in that case was announced, it might well be supposed that, without further ado, we would vacate and remand in light of *Cox*. But because the incident leading to the present convictions occurred in a public library and might be thought to raise materially different questions, we have heard argument and have considered the case *in extenso*.

The locus of the events was the Audubon Regional Library in the town of Clinton, Louisiana, Parish of East Feliciana. The front room of the building was used as a public library facility where patrons might obtain library services. It was a small room, containing two tables and one chair (apart from the Branch Assistant's desk and chairs), a stove, a card catalogue, and open book shelves. The room was referred to by the regional librarian, Mrs. Perkins, as "the adult reading-room, the adult service-room." The library permitted "registered

[3] While it was not disputed that the demonstration was "orderly and well-controlled," the demonstrators clapped and sang and petitioner spoke in protest of arrests of certain other civil rights demonstrators. In addition to the breach of the peace charge, Cox was charged with obstructing public passageways and with demonstrating near a courthouse. Convictions on these grounds were also reversed. See 379 U. S. 536, 559.

borrowers" to "browse" among the books in the room or to borrow books. A "registered borrower" was one who could produce an identification card showing that he was registered by the Audubon Regional Library. Other space in the building included the headquarters of the regional library.

The Audubon Regional Library is operated jointly by the Parishes of East Feliciana, West Feliciana, and St. Helena. It has three branches and two bookmobiles. The bookmobiles served 33 schools, both white and Negro, as well as "individuals." One of the bookmobiles was red, the other blue. The red bookmobile served only white persons. The blue bookmobile served only Negroes. It is a permissible inference that no Negroes used the branch libraries.[4]

The registration cards issued to Negroes were stamped with the word "Negro." A Negro in possession of such a card was entitled to borrow books, but only from the blue bookmobile. A white person could not receive service from the blue bookmobile. He would have to wait until the red bookmobile came around, or would have to go to a branch library.

This tidy plan was challenged on Saturday, March 7, 1964, at about 11:30 a. m. Five young Negro males, all residents of East or West Feliciana Parishes, went into the adult reading or service room of the Audubon Regional Library at Clinton. The Branch Assistant, Mrs. Katie Reeves, was alone in the room. She met the men "between the tables" and asked if she "could help." Petitioner Brown requested a book, "The Story of the Negro" by Arna Bontemps. Mrs. Reeves checked the card catalogue, ascertained that the Branch did not have the book, so advised Mr. Brown, and told him that she

[4] The inference finds support in testimony both of the sheriff and of Mrs. Laura Spears, a witness for the defense who was employed as the assistant in charge of the blue bookmobile.

would request the book from the State Library, that he would be notified upon its receipt and "he could either pick it up or it would be mailed to him." She told him that "his point of service was a bookmobile or it could be mailed to him." Mrs. Reeves testified that she expected that the men would then leave; they did not, and she asked them to leave. They did not. Petitioner Brown sat down and the others stood near him. They said nothing; there was no noise or boisterous talking. Mrs. Reeves called Mrs. Perkins, the regional librarian, who was in another room. Mrs. Perkins asked the men to leave. They remained.

Neither Mrs. Reeves nor Mrs. Perkins had called the sheriff, but in "10 to 15 minutes" from the time of the arrival of the men at the library, the sheriff and deputies arrived. The sheriff asked the Negroes to leave. They said they would not. The sheriff then arrested them. The sheriff had been notified that morning that members of the Congress of Racial Equality "were going to sit-in" at the library. Ordinarily, the sheriff testified, CORE tells him when they are going to demonstrate or picket. The sheriff was standing at his "place of business" when he saw "these 5 colored males coming down the street." He saw them enter the library. He called the jail to notify his deputies, and he reached the library immediately after the deputies got there. When the sheriff arrived, there was no noise, no disturbance. He testified that he arrested them "for not leaving a public building when asked to do so by an officer."

The library obtained the requested book and mailed it to Mr. Brown on March 29, 1964. The accompanying card said, "You may return the book either by mail or to the Blue Bookmobile." The reference to the color of the vehicle was obviously not designed to facilitate identification of the library vehicle. The blue bookmobile is for Negroes and for Negroes only.

In the course of argument before this Court, counsel for both the State and petitioners stated that the Clinton Branch was closed after the incident of March 7. Counsel for the State also advised the court that the use of cards stamped "Negro" continues to be the practice of the regional library.

On March 25, 1964, Mr. Brown and his four companions were tried and found guilty. Brown was sentenced to pay $150 and costs, and in default thereof to spend 90 days in the parish jail. His companions were sentenced to $35 and costs, or 15 days in jail. The charge was that they had congregated together in the public library of Clinton, Louisiana, "with the intent to provoke a breach of the peace and under circumstances such that a breach of the peace might be occasioned thereby" and failing and refusing "to leave said premises when ordered to do so" by the librarian and by the sheriff.

The Louisiana breach of peace statute under which they were accused reads as follows: "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others . . . in . . . a . . . public place or building . . . and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer . . . or any other authorized person . . . shall be guilty of disturbing the peace." [5]

Under Louisiana law, these convictions were not appealable. See *Garner* v. *Louisiana, supra,* at 161–162. Petitioners sought discretionary review by the Louisiana Supreme Court, which denied their application, finding no error. This Court granted certiorari, 381 U. S. 901, and we reverse.

We may briefly dispose of certain threshold problems. Petitioners cannot constitutionally be convicted merely

[5] La. Rev. Stat. § 14:103.1 (Cum. Supp. 1962).

because they did not comply with an order to leave the library. See *Shuttlesworth* v. *City of Birmingham*, 382 U. S. 87, 90–91; *Wright* v. *Georgia*, 373 U. S. 284, 291–293; *Johnson* v. *Virginia*, 373 U. S. 61; cf. *Cox* v. *Louisiana*, *supra*, at 579 (separate opinion of MR. JUSTICE BLACK). The statute itself reads in the conjunctive; it requires both the defined breach of peace *and* an order to move on. Without reference to the statute, it must be noted that petitioners' presence in the library was unquestionably lawful. It was a public facility, open to the public. Negroes could not be denied access since white persons were welcome. *Wright* v. *Georgia*, *supra*, at 292; *Watson* v. *City of Memphis*, 373 U. S. 526; *Johnson* v. *Virginia*, *supra*. Petitioners' deportment while in the library was unexceptionable. They were neither loud, boisterous, obstreperous, indecorous nor impolite. There is no claim that, apart from the continuation—for ten or fifteen minutes—of their presence itself, their conduct provided a basis for the order to leave, or for a charge of breach of the peace.

We come, then, to the barebones of the problem. Petitioners, five adult Negro men, remained in the library room for a total of ten or fifteen minutes. The first few moments were occupied by a ritualistic request for service and a response. We may assume that the response constituted service, and we need not consider whether it was merely a gambit in the ritual. This ceremony being out of the way, the Negroes proceeded to the business in hand. They sat and stood in the room, quietly, as monuments of protest against the segregation of the library. They were arrested and charged and convicted of breach of the peace under a specific statute.

If we compare this situation with that in *Garner*, we must inevitably conclude that here, too, there is not the slightest evidence which would or could sustain the application of the statute to petitioners. The statute

requires a showing either of "intent to provoke a breach of the peace," or of "circumstances such that a breach of the peace may be occasioned" by the acts in question. There is not in this case the slightest hint of either. We need not be beguiled by the ritual of the request for a copy of "The Story of the Negro." We need not assume that petitioner Brown and his friends were in search of a book for night reading. We instead rest upon the manifest fact that they intended to and did stage a peaceful and orderly protest demonstration, with no "intent to provoke a breach of the peace." See *Garner* v. *Louisiana, supra,* at 174.

Nor were the circumstances such that a breach of the peace might be "occasioned" by their actions, as the statute alternatively provides. The library room was empty, except for the librarians. There were no other patrons. There were no onlookers except for the vigilant and forewarned sheriff, and his deputies. Petitioners did nothing and said nothing even remotely provocative. The danger, if any existed, was surely less than in the course of the sit-in at the "white" lunch counters in *Garner*. And surely there was less danger that a breach of the peace might occur from Mrs. Katie Reeves and Mrs. Perkins in the adult reading room of the Clinton Branch Library than that disorder might result from the "restless" white people in the bus depot waiting room in *Taylor*, or from the 100 to 300 "grumbling" white onlookers in *Cox*. But in each of these cases, this Court refused to countenance convictions under Louisiana's breach of the peace statute.

The argument of the State of Louisiana, however, is that the issue presented by this case is much simpler than our statement would indicate. The issue, asserts the State, is simply that petitioners were using the library room "as a place in which to loaf or make a nuisance of themselves." The State argues that the

"test"—the permissible civil rights demonstration—was concluded when petitioners entered the library, asked for service and were served. Having satisfied themselves, the argument runs, that they could get service, they should have departed. Instead, they simply sat there, "staring vacantly," and this was "enough to unnerve a woman in the situation Mrs. Reeves was in."

This is a piquant version of the affair, but the matter is hardly to be decided on points. It was not a game. It could not be won so handily by the gesture of service to this particular request. There is no dispute that the library system was segregated, and no possible doubt that these petitioners were there to protest this fact. But even if we were to agree with the State's ingenuous characterization of the events, we would have to reverse. There was no violation of the statute which petitioners are accused of breaching; no disorder, no intent to provoke a breach of the peace and no circumstances indicating that a breach might be occasioned by petitioners' actions. The sole statutory provision invoked by the State contains not a word about occupying the reading room of a public library for more than 15 minutes, any more than it purports to punish the bare refusal to obey an unexplained command to withdraw from a public street, see *Garner, supra,* or public building. We can find nothing in the language of the statute, in fact, which would elevate the giving of cause for Mrs. Reeves' discomfort, however we may sympathize with her, to a crime against the State of Louisiana. Cf. *Shuttlesworth* v. *City of Birmingham,* 382 U. S. 87, 101 (concurring opinion).

But there is another and sharper answer which is called for. We are here dealing with an aspect of a basic constitutional right—the right under the First and Fourteenth Amendments guaranteeing freedom of speech and of assembly, and freedom to petition the Government for

a redress of grievances. The Constitution of the State of Louisiana reiterates these guaranties. See Art. I, §§ 3, 5. As this Court has repeatedly stated,[6] these rights are not confined to verbal expression. They embrace appropriate types of action which certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be, the unconstitutional segregation of public facilities.[7] Accordingly, even if the accused action were within the scope of the statutory instrument, we would be required to assess the constitutional impact of its application, and we would have to hold that the statute cannot constitutionally be applied to punish petitioners' actions in the circumstances of this case. See *Edwards* v. *South Carolina, supra,* at 235. The statute was deliberately and purposefully applied solely to terminate the reasonable, orderly, and limited exercise of the right to protest the unconstitutional segregation of a public facility. Interference with this right, so exercised, by state action is intolerable under our Constitution. *Wright* v. *Georgia, supra,* at 292.

It is an unhappy circumstance that the locus of these events was a public library—a place dedicated to quiet, to knowledge, and to beauty. It is a sad commentary that this hallowed place in the parishes of East and West Feliciana bore the ugly stamp of racism. It is sad, too, that it was a public library which, reasonably enough in the circumstances, was the stage for a confrontation between those discriminated against and the representatives of the offending parishes. Fortunately, the circumstances here were such that no claim can be made

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[6] See, *e. g., NAACP* v. *Button,* 371 U. S. 415, 428–431; *Garner* v. *Louisiana, supra,* at 201 (separate opinion of MR. JUSTICE HARLAN); *NAACP* v. *Alabama,* 357 U. S. 449, 460–463; *Stromberg* v. *California,* 283 U. S. 359, 369. See *Kalven, op. cit. supra,* n. 1, at 129–138.

[7] Cf. *Wright* v. *Georgia, supra.*

that use of the library by others was disturbed by the demonstration. Perhaps the time and method were carefully chosen with this in mind. Were it otherwise, a factor not present in this case would have to be considered. Here, there was no disturbance of others, no disruption of library activities, and no violation of any library regulations.

A State or its instrumentality may, of course, regulate the use of its libraries or other public facilities. But it must do so in a reasonable and nondiscriminatory manner, equally applicable to all and administered with equality to all. It may not do so as to some and not as to all. It may not provide certain facilities for whites and others for Negroes. And it may not invoke regulations as to use—whether they are *ad hoc* or general—as a pretext for pursuing those engaged in lawful, constitutionally protected exercise of their fundamental rights. Cf. *Wright* v. *Georgia, supra,* at 293.

The decision below is

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 41.—October Term, 1965.

Henry Brown et al., Petitioners, v. State of Louisiana. } On Writ of Certiorari to the Supreme Court of Louisiana.

[February 23, 1966.]

Opinion of Mr. Justice Brennan, concurring in the judgment.

Petitioners were charged and convicted of violating the Louisiana statute, § 14:103.1, which provides:

> "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby . . . crowds or congregates with others . . . in or upon . . . a public street or public highway, or upon a public sidewalk, or any other public place or building . . . and who fails or refuses to disperse and move on . . . when ordered to do so by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the State of Louisiana, or any other authorized person . . . shall be guilty of disturbing the peace." La. Rev. Stat., 1950, § 14:103.1 (Cum. Supp. 1962).

In *Cox* v. *Louisiana*, 379 U. S. 536, 551–552, the Court declared this statute as construed unconstitutional for overbreadth: it "is unconstitutional in that it sweeps within its broad scope activities that are constitutionally protected free speech and assembly." This holding was concurred in by my Brothers Black, *id.*, at 576–580, Harlan, and White, *id.*, at 591. No limiting construction [1] or legislative revision [2] has intervened, and no

[1] See *Shuttlesworth* v. *City of Birmingham*, 382 U. S. 87, 99; *Dombrowski* v. *Pfister*, 380 U. S. 497, 491, n. 7.

[2] Compare *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, and *Commercial Pictures Corp.* v. *Regents*, 346 U. S. 587, with *Kingsley Int'l Pictures Corp.* v. *Regents*, 360 U. S. 684.

circumstance of this case makes that declaration of invalidity less controlling here. The overbreadth of the statute recognized in *Cox* therefore requires the reversal of these convictions.

The appellants in *Cox* were convicted for their conduct on public streets and sidewalks, while petitioners here were convicted for their conduct in a public library. Because of this it is contended in dissent, *post*, p. —, that *Cox* and this case involve different "phases" of § 14:103.1—a "public street and sidewalk phase" in contrast to a "public building phase." In so far as this dissection of the statute is meaningful, it does not make the holding of *Cox* inapplicable;[3] both phases are overbroad and the overbreadth of each poses a serious threat to the exercise of constitutional rights.

First. The overbreadth of § 14:103.1 discerned in *Cox* did not inhere in the terms "public street" or "public sidewalk"; it inhered in the phrase "breach of the peace" as interpreted by the Supreme Court of Louisiana to mean "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." 379 U. S., at 551. Nothing in the Louisiana courts' decisions in this case rejects this interpretation of the phrase "breach of the peace" for the public building phase of § 14:103.1; nor is there anything about a public building that would make this definition of the proscribed conduct inapplicable.

The public building phase of § 14:103.1, especially when read in context of the other phases, is not, contrary to the dissent's suggestion, *post*, p. —, restricted

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[3] In declaring the statute unconstitutional for overbreadth the Court in *Cox* relied heavily on *Terminiello* v. *Chicago*, 337 U. S. 1, a case involving the application of a breach of the peace ordinance to an individual purporting to exercise First Amendment rights in an auditorium, not on the streets or sidewalks.

to, nor even aimed at, "trespassers on government property"; Louisiana has a separate criminal statute, not at all involved in this prosecution, which explicitly deals with trespassing in public buildings.[4] Moreover, I reject the suggestion that this breach of the peace statute, making an order "to disperse and move on" an element of the crime, is as narrow as a sufficiently specific trespass statute explicitly concerned with trespassing on government property that also makes an order to keep off or leave the property an element of the crime. Because this statute seeks to curb breaches of the peace and risks of such breaches occurring through crowding, it apparently permits a wide range of persons to issue the requisite order, no formal or customary procedures need be followed in issuing the order, and instantaneous and unquestioning compliance with the order is required. For example, the trial court below, in applying § 14:103.1, assumed that as a matter of state law any employee of the library would have the authority to issue the order "to disperse and move on" simply as the occasion arose and that petitioners were expected to immediately comply with the order even though they might have reasonably thought they were being ejected simply to preserve the segregated character of the library. Cf. *Wright* v. *Georgia*, 373 U. S. 284, 291–292.

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[4] La. Acts 1963, No. 91, amending and re-enacting La. Rev. Stat., 1950, § 14:63.3 (1962 Cum. Supp.). The dissent refers to subdivision (4) of § 14:103.1 to support its view that subdivision (1), the basis for the charges and the convictions, "is for all intents and purposes aimed at trespassers on government property." *Post*, p. —. However, subdivision (4) is also modified by the introductory clause "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby"; and thus to establish a violation of that subdivision more than the refusal to leave the "premises of another" after an order to do so would have to be proved.

Second. The danger posed by the Louisiana courts' definition of "breach of the peace"—that it might sweep within its broad scope activities that are constitutionally protected—is no less present when read in conjunction with "public building" than when read with "public street" and "public sidewalk." The constitutional protection for conduct in a public building undertaken to desegregate governmental services provided therein derives from both the First Amendment guarantees of freedom of speech, petition and assembly,[5] and the Equal Protection Clause's prohibition against racial segregation of governmental services and facilities. Over-

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[5] Cf. *NAACP* v. *Button*, 371 U. S. 415, 428–431; *Garner* v. *Louisiana*, 368 U. S. 157, 201–202 (opinion of MR. JUSTICE HARLAN): "There was more to the conduct of those petitioners than a bare desire to remain at the 'white' lunch counter and their refusal of a police request to move from the counter. We would surely have to be blind not to recognize that petitioners were sitting at these counters, where they knew they would not be served, in order to demonstrate that their race was being segregated in dining facilities in this part of the country.

"Such a demonstration, in the circumstances of these two cases, is as much a part of the 'free trade in ideas,' *Abrams* v. *United States*, 250 U. S. 616, 630 (Holmes, J., dissenting), as is verbal expression, more commonly thought of as 'speech.' It, like speech, appeals to good sense and to 'the power of reason as applied through public discussion,' *Whitney* v. *California* (Brandeis, J., concurring), just as much as, if not more than, a public oration delivered from a soapbox at a street corner. This Court has never limited the right to speak, a protected 'liberty' under the Fourteenth Amendment, *Gitlow* v. *New York*, 268 U. S. 652, 666, to mere verbal expression. *Stromberg* v. *California*, 283 U. S. 359; *Thornhill* v. *Alabama*, 310 U. S. 88; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 633–634. See also *NAACP* v. *Alabama*, 357 U. S. 449, 460. If the act of displaying a red flag as a symbol of opposition to organized government is a liberty encompassed within free speech as protected by the Fourteenth Amendment, *Stromberg* v. *California*, *supra*, the act of sitting at a privately owned lunch counter with

breadth in the public building phase might inhibit the exercise of these constitutional rights by threatening punishment of the initial efforts to secure such desegregation. For example, the public building phase of § 14:103.1 might be read as reaching the conduct of two Negroes who did nothing more than enter a library restricted to whites, request a book and refuse to leave when ordered to do so before service was rendered. The conduct of the two Negroes would be as constitutionally protected as the conduct of the Negro who refused to leave the white section of a segregated courtroom, *Johnson* v. *Virginia*, 373 U. S. 61, and yet their conduct would be punishable under § 14:103.1 because their purpose could be deemed "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet."

In light of these possible clearly unconstitutional applications of the statute, we need not decide whether petitioners' actual conduct is constitutionally protected; for "in appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar." *NAACP* v. *Button*, 371 U. S. 415, 432. It suffices that petitioners' conduct was arguably constitutionally protected and was "not the sort of 'hard-core' conduct that would obviously be prohibited under any construction" [6] of § 14:103.1. It was engaged in to achieve desegregation of the library through a request for service and a protest, expressed by petitioners'

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the consent of the owner, as a demonstration of opposition to enforced segregation, is surely within the same range of protections."

Public buildings often provide a forum for more traditional forms of First Amendment activitity, such as verbal expression. See, *e. g.*, *Thomas* v. *Collins*, 323 U. S. 516 (city hall); *Terminiello* v. *Chicago*, 337 U. S. 1 (auditorium open to public in privately owned building).

[6] *Dombrowski* v. *Pfister*, 380 U. S., at 491–492.

continued presence. Petitioners were orderly and quiet. Their continued presence, for a relatively short period of time, did not interfere with the functioning of the library. Their presence might have embarrassed and unnerved the librarians, who had in the past faithfully observed the policy of segregation; but such "vague disquietudes" [7] do not take petitioners' conduct outside the appropriate limits. The sheriff gave petitioners no reason for the order to leave,[8] and thus petitioners might have reasonably believed that they were being ejected only because they were Negroes seeking to exercise their

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[7] *Watson* v. *City of Memphis*, 373 U. S. 526, 535–536. See generally *Buchanan* v. *Warley*, 245 U. S. 60, 81; *Cooper* v. *Aaron*, 358 U. S. 1, 16; *Taylor* v. *Louisiana*, 370 U. S. 154, 156; *Wright* v. *Georgia*, 373 U. S., at 293; *Cox* v. *Louisiana*, 379 U. S., at 551.

[8] On cross-examination the sheriff testified as follows:

"Q. Sheriff you did arrest these people, these defendants, because you considered their action going into the library as a demonstration?

"A. I arrested them because the occupants of the building had asked them to leave, and so had I; it was a public building and they refused to leave.

. . . . .

"Q. What did you tell them when you went in, Sheriff, did you have any conversations with these people?

"A. Not with them, I talked to Mrs. Perkins, and she told me that she had taken their application and had asked them to leave, and they wouldn't, and I asked them to leave. Henry Brown told me it was a public library, the rest of them didn't say anything.

"Q. Did Brown mention anything to you about wanting a book on the Constitution of the United States?

"A. He did not.

"Q. After Brown told you that it was a public library, what did you say then?

"A. I don't know of anything I said. I was assured that Mrs. Perkins had asked them to leave since they didn't have the book they wanted.

"Q. Did you, at that point, ask them to leave?

"A. I did.

"Q. When you——

"A. And I also told them that they had the choice of leaving or

constitutional rights;[9] as my Brother BLACK observed in *Feiner* v. *New York*, 340 U. S. 315, 327, "at least where time allows, courtesy and explanation of commands are basic elements of good official conduct in a democratic society."

Since the overbreadth of § 14:103.1 as construed clearly requires the reversal of these convictions,[10] it is wholly unnecessary to reach, let alone rest reversal, as the prevailing opinion seems to do, on the proposition that even a narrowly drawn "statute cannot constitutionally be applied to punish petitioners' actions in the circumstances of this case."

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being arrested for not leaving a public building when asked to do so by an officer.

"Q. When you got there, Sheriff, was anybody making any noise?
"A. No noise.

. . . . .

"Q. Prior to asking these defendants to leave, did you ask each of them, all of them, whether or not they intended to use the reference books at the library?

"A. I didn't ask them what they intended to do, and they didn't state at that time what they were doing there."

[9] See *Wright* v. *Georgia*, 373 U. S., at 291–292: "Obviously . . . one cannot be punished for failing to obey the command of an officer if that command itself is violative of the Constitution."

[10] This ground of reversal makes it unnecessary to decide whether subdivision (1) of § 14:103.1 embodies an invidious discrimination because it contains the following exemption: "[N]othing herein contained shall apply to bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accompanying or securing more favorable wage standards, hours of employment and working conditions . . . ." My Brother BLACK in his opinion in *Cox* v. *Louisiana*, 379 U. S., at 581, found the obstructing public passages statute (La. Rev. Stat., 1950 § 14:100.1 (Cum. Supp. 1962)) to embody "an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment" because it contained the same exemption from its coverage for labor union activities.

SUPREME COURT OF THE UNITED STATES

No. 41.—October Term, 1965.

Henry Brown et al., Petitioners, *v.* State of Louisiana. } On Writ of Certiorari to the Supreme Court of Louisiana.

[February 23, 1966.]

Mr. Justice White, concurring in the result.

Were it clear from this record that lingering in a public library for 10 minutes after ordering a wanted book contravened some explicit statute, ordinance, or library regulation of general application, or even if it were reasonably clear that a 10-minute interlude between receiving service and departure exceeded what is generally contemplated as a normal use of a public library, I would have difficulty joining in a reversal of this case, for in either of these events, I would consider a refusal to leave the library and an insistence upon violating a generally applicable condition concerning the use of the library evidence of an intent to breach the peace constitutionally sufficient to sustain a conviction. Nor would I deem the First Amendment to forbid a municipal regulation limiting loafing in library reading rooms.

But nothing of the kind comes through to me in this record. There is no such ordinance or regulation and it can hardly be said that the brief sojourn in this county library departed so far from the common practice of library users. The petitioners were there but a very brief period before being asked to leave, they were quiet and orderly, they interferred with no other library users and for all this record reveals they might have been considering among themselves what to do with the rest of

their day. I think that the petitioners were entitled to be where they were for the time that they remained, and it is difficult to believe that if this group had been white its members would have been asked to leave on such short notice, much less asked to leave by the sheriff and arrested, rather than merely escorted from the building, when reluctance to leave was demonstrated. That the library was a segregated institution and was not in the habit of allowing Negroes in the building only underlines this situation. In my view, the behavior of these petitioners and their use of the library building, even though it was for the purposes of a demonstration, did not depart significantly from what normal library use would contemplate.

The conclusion that petitioners were making only a normal and authorized use of this public library requires the reversal of their convictions. Petitioners' entering the library and refusing to forego a use of the library normally permitted members of the public is no evidence, in the circumstance of this case, of any intent to breach the peace. Moreover, if the petitioners were making a use of the library normally permitted whites, why were they asked to leave the library? They were quiet, orderly, and exhibited no threatening or provocative behavior. The library had been a segregated institution, has been closed since the incident involved in this case, and the petitioners were advised they could pick up the desired book at the blue bookmobile. The State arrested petitioners because they refused to leave the library but offers no convincing explanation for why they were asked to leave. On this record, it is difficult to avoid the conclusion that petitioners were asked to leave the library because they were Negroes. If they were, their conviction denies them equal protection of the laws.

SUPREME COURT OF THE UNITED STATES

No. 41.—October Term, 1965.

Henry Brown et al., Petitioners, v. State of Louisiana. } On Writ of Certiorari to the Supreme Court of Louisiana.

[February 23, 1966.]

Mr. Justice Black, with whom Mr. Justice Clark, Mr. Justice Harlan, and Mr. Justice Stewart join, dissenting.

I do not believe that any provision of the United States Constitution forbids any one of the 50 States of the Union, including Louisiana, to make it unlawful to stage "sit-ins" or "stand-ups" in their public libraries for the purpose of advertising objections to the State's public policies. That, however, is precisely what the Court or at least a majority of the Court majority [1] here holds that all the States are forbidden to do by our Constitution. I dissent. The three opinions written for the majority of five who reverse these convictions make it necessary for me to state the relevant facts, circumstances, and issues in this case as I view them.

Representatives of the Congress of Racial Equality (CORE) claimed that Negroes had been "locked out" of libraries operated jointly by three Louisiana parishes. A "demonstration was planned" by the organization "to integrate the Library," and accordingly these five petitioners, all Negroes, went to the Audubon Regional Li-

[1] There are three separate opinions which support reversal of the decision below. The opinion of my Brother Fortas, which for convenience I will call the majority's "prevailing" opinion, is joined by The Chief Justice and my Brother Douglas. My Brothers Brennan and White each concur in the result of the prevailing opinion, but reach that result on different grounds.

brary located at Clinton, Louisiana on a Saturday morning about 11:30 a. m. "to sit-in at the Library." The county sheriff, whose office was in the courthouse within sight of the library building, had received information that "they [referring to CORE] were going to sit-in, or that something was going to take place at the Library that morning," and noticed the petitioners when they went by his office on their way to the library. Upon arrival at the library petitioners were met inside the building by Mrs. Reeves, who was the assistant librarian. She courteously asked them if she could help them in any way. One of the group, petitioner Brown, handed her a slip of paper on which was written the title of a book which he said he wanted. Mrs. Reeves went to her shelves and her catalogues, and after making a search, came back and told Mr. Brown that the library did not have the book, but that she could request it from the state library and probably get it for him. She told him she would do this. Mr. Brown then sat down in the only chair in the library room other than the chair at Mrs. Reeves' desk, and the other four petitioners stood around him. When petitioners did not leave, Mrs. Reeves told the group again that she would send for the book, and when Mr. Brown continued to sit and the others continued to stand, she asked them to leave. They did not leave, so Mrs. Reeves then called Mrs. Perkins, the regional librarian, and told Mrs. Perkins about the situation. Mrs. Perkins went to Mr. Brown and told him she did not know whether he understood that a request for the book he had asked for would be sent to the state library. Along about that time Mr. Brown said to Mrs. Perkins, "what about the Constitution?" but did not request that any copy of the Constitution be given to him. Mrs. Perkins then repeated the request of Mrs. Reeves that petitioners leave the library telling them "that the one who seemed to want

something had been served." About 10 or 15 minutes after the petitioners came to the library, when according to Mrs. Perkins' testimony she was just about to call the sheriff over the phone, the sheriff came into the library. Mrs. Perkins explained to him that Mrs. Reeves had taken petitioners' application for the book they wanted, that the book was not available, that she and Mrs. Reeves had both requested the petitioners to leave, and that they would not do so. After learning these facts, the sheriff also asked petitioners to leave the library building and stated that he would have to arrest them if they did not. The petitioners refused to leave, and speaking for the group, petitioner Brown told the sheriff "that he was not going to leave the Library." Thereupon the sheriff immediately arrested all of them. Petitioners, while in the library, never talked in unusually loud voices and used no bad language. Beyond Mr. Brown's request for the book which the library did not have, none of the petitioners at any time prior to his arrest requested any further service of either of the librarians, nor did any petitioner in any other way seek to read in the library or otherwise use any of the library's facilities except for sitting and standing purposes.

The Clinton branch of the Audubon Regional Library is not a large one. It appears to be used almost entirely as a circulating and not a reading library. The duty of Mrs. Reeves, assistant librarian, according to her testimony which was not disputed, was "To assist people who come into the Library to select their books; check out the books to them; to keep the shelves in order, and to keep a record of the circulation of the day." In the library's "lobby," where the events of this case took place, there were book shelves and one table on each side; also in the room were a desk and chair for the librarian, and one other chair. The two tables were used mainly for book display and magazines. It was not against the policy

of the library to allow citizens with library registration cards to read if they cared to. But according to Mrs. Reeves' testimony at trial, "very few people read; if a book is there and they want it, they take it and go." Mrs. Perkins testified that "We do not maintain a reading-room, as such, we do not have the space for it." Mrs. Perkins later referred to the "lobby" as the "adult reading-room, the adult service-room."

The particular part of the Louisiana statute,[2] under which petitioners were convicted, contrary to implications in the other opinions, has never been before this Court previous to this time. It provides as follows:

> "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby . . . congregates with others . . . in any . . . public . . . building . . . , and who fails or refuses to . . . move on, when ordered so to do by any law enforcement officer of any municipality . . . or any other authorized person . . . shall be guilty of disturbing the peace."

The information against these petitioners charged, substantially in the language of the statute, that petitioners failed and refused to leave the library when ordered to do so by Mrs. Perkins who was in lawful charge of the library and also failed to leave the premises when ordered to do so by the sheriff.

Because I think that the crucial issues to be decided here are much narrower and far less complicated than the prevailing opinion implies, I find it necessary first to point out that several matters discussed in that opinion are, in my judgment, either irrelevant, or that inferences drawn from them are not justified.

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[2] La. Rev. Stat. § 14:103.1 (Cum. Supp. 1962).

I.

In concluding to reverse these convictions the prevailing opinion relies almost entirely on three prior breach of the peace cases which have come to this Court from the State of Louisiana, and *Edwards* v. *South Carolina*, 372 U. S. 229. I think that none of these four cases has any appreciable bearing on what the Court should hold in this case.

(a) The first of these cases is *Garner* v. *Louisiana*, 368 U. S. 157, decided in December 1961. That case, involving "sit-in" demonstrations at several lunch counters, was decided under an old Louisiana breach of the peace statute. The section involved here was added to the old law after the events described in that case took place, but before the Court's opinion. The old law considered in *Garner* did not contain any phrase similar to the one under consideration here which makes it an offense to disturb the peace by congregating in a public building over the protest of a person rightfully in charge of the building. Moreover, the majority of the Court in *Garner*, in construing the old law, noted the presence of the new section, and expressly contrasted its reach to that of the older statute. 368 U. S., at 168–169. There are other significant differences between *Garner* and this case, but the fact that *Garner* involved an almost entirely different statute, which was expressly distinguished from the present one by the Court's opinion, makes it hard for me to see how the Court's *Garner* holding can provide any meaningful support for the reversal of these convictions.

(b) The second Louisiana breach of the peace case upon which the prevailing opinion relies for reversal is *Taylor* v. *Louisiana*, 370 U. S. 154. That case as described today in the prevailing opinion "concerned a sit-in by Negroes in a waiting room at a bus depot,

reserved 'for whites only.'" In *Taylor*, the Court in a short *per curiam* opinion held merely that the breach of the peace convictions could not be supported where "the only evidence to support the charge was that petitioners were violating a custom that segregated people in waiting rooms according to their race" contrary to federal law. 370 U. S., at 156. There was no indication in that case that persons, having no business whatever in a bus depot except to stage a public protest against some state policy, have a constitutional right to occupy the depot's space after having been requested by competent authorities to leave.

(c) The case relied on most heavily by the prevailing opinion and my Brother BRENNAN is *Cox* v. *Louisiana*, 379 U. S. 536. That case, unlike this one involved picketing and patrolling in the streets, and correspondingly that part of the Louisiana breach of the peace statute which prohibited certain kinds of street activity. The language of the phase of the statute under consideration here, relating to congregating in public buildings and refusing to move on when ordered to do so by an authorized person, was in no way involved or discussed in *Cox*. The problems of state regulation of the streets on the one hand, and public buildings on the other, are quite obviously separate and distinct. Public buildings such as libraries, school houses, fire departments, court houses, and executive mansions are maintained to perform certain specific and vital functions. Order and tranquillity of a sort entirely unknown to the public streets are essential to their normal operation. Contrary to the implications in the prevailing opinion it is incomprehensible to me that a State must measure disturbances in its libraries and on the streets with identical standards. Furthermore, the vice of discriminatory enforcement, which contaminates the "public street"

phase of this statute,[3] does not beset the statute's application to activity in public buildings. In the public building, unlike the street, peace and quiet is a fast and necessary rule, and as a result there is much less room for peace officers to abuse their authority in enforcing the "public building" part of the statute.

In my Brother BRENNAN'S separate concurring opinion the contention seems to be made that in *Cox* this Court declared as unconstitutionally vague not only the part of the Louisiana statute under which Cox was convicted relating to picketing in the streets, but also the part creating the offense under which petitioners here were convicted. If this is true it means that in *Cox* the Court declared unconstitutional both the parts of the statute creating the offenses involved in the *Cox* case and this one, and also all of the some 30-odd separate and diverse offenses enumerated in the statute ranging from the making of obscene remarks and gestures, to causing a disturbance on a public bus, to refusing to leave the private premises of another when asked to do so by the owner. If the Court's holding was that broad it has placed in great jeopardy every breach of the peace statute in this country. I do not think the Court intended to do any such thing. I can see nothing in the Court's opinion in *Cox* or in any of the concurring opinions, one of which I wrote, which indicates an intention to make such a sweep-condemnation of breach of the peace statutes. In *Cox* this Court held unconstitutional the part of the statute under which Cox was convicted because as construed by the Louisiana Supreme Court it authorized "persons to be punished merely for peacefully expressing unpopular views." 379 U. S., at 551. The part of the statute involved here which makes it an offense to congregate

[3] See my concurring opinion in *Cox* v. *Louisiana*, 379 U. S. 559, 578–580.

in a public building and refuse to leave it when asked to do so by an authorized person, does not affect or threaten in any way an exercise of the rights of free speech, and the Louisiana courts did not so construe this phase of the statute as they had construed the part under which Cox was convicted. The phase of the statute under scrutiny in this case clearly and precisely regulates certain particular conduct in language which taken as a whole has no ambiguity whatever. Persons of ordinary intelligence would have no difficulty whatever in knowing that this part of the statute requires them to move on from a public building when an authorized person asks them to do so. See *United States* v. *Petrillo*, 332 U. S. 1, 5–8. The only conduct reached by this part of the statute is a refusal to move on when requested to do so by an authorized person and this conduct is described in words declared in *Cox* to be "narrow and specific."[4] 379 U. S., at 551. Since petitioners here had no library business whatever the Constitution of the United States does not require that they be permitted to remain in the library despite state law to the contrary.

(d) The fourth case which the prevailing opinion cites as indicating that the "public building" phase of the Louisiana statute is unconstitutional is *Edwards* v. *South Carolina*, 372 U. S. 229. This Court's holding in the *Edwards* case, however, was based on the fact that the statute construed there was not narrowly drawn to assure

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[4] A condition under which this conduct is punishable is that it be entered into "with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby." In the context of the *Cox* case relating to activity on the public streets this Court held this language unconstitutionally vague. But as I have pointed out above, the Court could not have meant that every disturbing the peace statute which contains this language is unconstitutional.

its nondiscriminatory application. Here the part of the Louisiana statute relating to public buildings, as construed and applied by the Louisiana courts, does clearly describe the offense. Nothing in *Edwards* as I read it, states any principle of constitutional law under which a State must permit its public libraries, dedicated to reading and learning and studying, to be used for the purpose of conducting protests against public or private policies. And that is the constitutional issue in the present case.

I find nothing in these four cases, nor in any other case decided by this Court that I can recall, which restricts Louisiana's power to enforce that part of its statute on which these convictions rest in order to maintain peace and order in its public libraries so as to further the extremely necessary purposes underlying their existence.

II.

The prevailing opinion and to some extent the two separate concurring opinions treat this case as though Louisiana was here attempting to enforce a policy of denying Louisiana citizens the right to use the State's libraries on account of race. Whatever may have been the policy of the State of Louisiana in the past or may be the policy of that State at the present, at other places or in other circumstances, there simply was no racial discrimination practiced in this case. These petitioners were treated with every courtesy and granted every consideration to which they were entitled in the Audubon Library. They asked for a book, perhaps as the prevailing opinion suggests more as a ritualistic ceremonial than anything else. The lady in charge nevertheless hunted for the book, found she did not have it, sent for it, and later obtained it from the state library for petitioners'

use.[5] No petitioner asked for any other book, none indicated that he wanted to read any other book, and none attempted to read any other book or any other printed matter. As a matter of fact the record shows, and the prevailing opinion admits, that the five petitioners stayed in the library not to use it for learning but as "monuments of protest" to voice their disapproval of what they thought was a policy of the State. Although Mrs. Perkins, the branch's librarian, testified unambiguously that there was no racial discrimination practiced at her library, and although the record shows without the slightest dispute that there was no discrimination of any kind or character practiced against these petitioners, in at least the prevailing opinion and that of my Brother WHITE it is nevertheless implied at several places that the equal treatment given these petitioners was some kind of subterfuge or sham. These aspersions are I think wholly without justification. The prevailing opinion refers to the "tidy plan" of the State; with reference to the service given petitioners it says that "We may assume that the response constituted service, and we need not consider whether it was merely a gambit in the ritual"; it insinuates that Louisiana was playing a "game" with petitioners' rights, and the courteous treatment given petitioners by the librarian is degraded by calling it a "gesture of service"; it, moreover, refers to the State's argument in this case as giving a "piquant version of the affair." I see no basis or reason for these innuendos against the State's defense of its convictions in this case. The State's District Attorney, who argued the case before us, stated frankly and forthrightly that

[5] The note describing the book he wanted which petitioner Brown gave Mrs. Reeves read, "Wendal Arna, the Story of the Negro: Bontems." This information apparently described no printed book. The book which was obtained from the state library for petitioners' use was The Story of the Negro, by Arna Bontemps.

there would be no defense had Louisiana denied these petitioners equal service at its public libraries on account of their race. There was no such denial. We must now consider the Court's reversal on its merits.

III.

As best I can tell, one ground upon which both the prevailing opinion and that of my Brother WHITE rely to reverse these convictions is that the State failed to prove its case. This conclusion appears to be based on the assumption that under the Louisiana statute properly construed, there can be no conviction unless persons who do not want library service stay there an unusually long time after being ordered to leave, make a big noise, use some bad language, engage in fighting, try to provoke a fight, or in some other way become boisterous. The argument seems to be that without a blatant, loud manifestation of aggressive hostility or an exceedingly long "sit-in" or "sojourn" in a public library, there are no circumstances which could foreseeably occasion a breach of the peace. Louisiana has not so construed its statute nor should we. Doing so goes against common sense and common understanding. While soft words can undoubtedly turn away wrath, they may also provoke it. Disturbers of the peace do not always rattle swords or shout invectives. It is high time to challenge the assumption in which too many people have too long acquiesced, that groups that think they have been mistreated or that have actually been mistreated have a constitutional right to use the public's streets, buildings, and property to protest whatever, wherever, whenever they want, without regard to whom it may disturb.

The phase of the Louisiana statute that we are considering here is for all intents and purposes aimed at trespassers on government property. In addition, subdivision (4) of the same Louisiana law makes it an

offense for one to refuse to leave the premises of another when requested to do so by the owner. Both of these provisions of the state statute, however, provide that before an offense is committed, the conduct must be engaged in "with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby." There is a long history behind trespass laws in the United States. Invasion of another man's property over his protest is one of the surest ways any person can pick out to disturb the peace. Louisiana, just like any other State in this Union, has a right to pass and use laws based on knowledge of this fact, a knowledge so widespread and prevalent that it would probably be difficult to find a hermit ignorant of its existence.

I think that the evidence in this case established every element in the offense charged against petitioners. No one disputes the fact that petitioners congregated in a public building and refused to move on when ordered to do so by authorized persons. The only factual question which can possibly arise regarding the application of the statute here is whether under Louisiana law petitioners either intended to breach the peace or created circumstances under which a breach might have been occasioned. The record shows that petitioners, as part of a plan, entered the library and once there stayed despite the librarians' protests until its normal activity was completely disrupted. To be sure, there were not "100 to 300 'grumbling' white onlookers" as there were in *Cox* v. *Louisiana*, *supra*, but surely, in the prevailing opinion's futile effort to rely on *Cox*, it is not meant that 300 or 100 grumbling onlookers must be crowded into a library before Louisiana can maintain an action under this statute. A tiny, branch, parish library, staffed by two women, is not a department store as in *Garner* v. *Louisiana*, *supra*, nor a bus terminal as in *Taylor* v. *Louisiana*,

supra, nor a public thoroughfare as in *Edwards* v. *South Carolina*, *supra*, and *Cox*. Short of physical violence, petitioners could not have more completely upset the normal, quiet functioning of the Clinton branch of Audubon Regional Library. The state courts below thought the disturbance created by petitioners constituted a violation of the statute. So far as the reversal here rests on a holding that the Louisiana statute was not violated, the Court simply substitutes its judgment for that of the Louisiana courts as to what conduct satisfies the requirements of that state statute. We are a long way off from what happened there to substitute our judgment for theirs. To do so not only upsets settled doctrine concerning the interpretation of state statutes by federal courts, see, *e. g.*, *Garner* v. *Louisiana*, *supra*, at 166; *Kingsley Pictures Corp.* v. *Regents*, 360 U. S. 684, 688, but also is built on shifting sands that ignore the realities of life in our country.

IV.

Having already attempted to hold, wrongfully I think, that these convictions should be set aside as unconstitutional because of a complete lack of evidence to prove the charge, the prevailing opinion ventures out in an attempt to decide other constitutional questions. It says:

> "Accordingly, even if the accused action were within the scope of the statutory instrument, we would be required to assess the constitutional impact of its application, and we would have to hold that the statute cannot constitutionally be applied to punish petitioners' actions in the circumstances of this case."

I have sometimes thought that this Court has gone entirely too far in refusing to decide constitutional questions on the ground that they should be avoided where possible.

The journey here, however, goes entirely too far in the opposite direction. Apparently unsatisfied with or unsure of the "no evidence" ground for reversing the convictions, the prevailing opinion goes on to state that the statute was used unconstitutionally in the circumstances of this case because it was "deliberately and purposefully applied solely to terminate the reasonable, orderly, and limited exercise of the right to protest the unconstitutional segregation of a public facility." First, I am constrained to say that this statement is wholly unsupported by the record in this case. There is simply no evidence in the record at all that petitioners were arrested because they were exercising the "right to protest." It is nevertheless said that this was the *sole* reason for the arrests. Moreover, the conclusion that the statute was unconstitutionally applied because it interfered with the petitioners' so-called protest establishes a completely new constitutional doctrine. In this case this new constitutional principle means that even though these petitioners did not want to use the Louisiana public library for library purposes, they had a constitutional right nevertheless to stay there over the protest of the librarian who had lawful authority to keep the library orderly for the use of people who wanted to use its books, its magazines, and its papers. But the principle espoused also has a far broader meaning. It means that the Constitution, the First and the Fourteenth Amendments, requires the custodians and supervisors of the public libraries in this country to stand helplessly by while protesting groups advocating one cause or another, stage "sit-ins" or "stand-ups" to dramatize their particular views on particular issues. And it should be remembered that if one group can take over libraries for one cause, other groups will assert the right to do it for causes which, while wholly legal, may not be so appealing to this Court. The States are thus paralyzed with reference to control of their li-

braries for library purposes, and I suppose that inevitably the next step will be to paralyze the schools. Efforts to this effect have already been made all over the country. Furthermore, here it seems to have made no difference whatever that the Audubon Regional Library, at least in this instance, satisfied its constitutional duty by giving these petitioners its services in full measure without regard to their race.

The constitutional doctrine that actually prevails in this Court today for the first time in its history rests at least in great part on the Court's interpretation of the First Amendment as carried into the States by the Fourteenth. This is the First Amendment which, as I have said in the past, is to me the very heart of our free government without which liberty and equality cannot exist.[6] But I have never thought and do not now think that the First Amendment can sustain the startling doctrine the prevailing opinion here creates. The First Amendment, I think, protects speech, writings, and expression of views in any manner in which they can be legitimately and validly communicated. But I have never believed that it gives any person or group of persons the constitutional right to go wherever they want, whenever they please, without regard to the rights of private or public property or to state law. Indeed a majority of this Court said as much in *Cox* v. *Louisiana,* 379 U. S. 559, 574. Though the First Amendment guarantees the right of assembly and the right of petition along with the rights of speech, press, and religion, it does not guarantee to any person the right to use someone else's property, even that owned by government and dedicated to other purposes, as a stage to express dissident ideas. The novel constitutional doctrine of the

[6] See my dissenting opinion in *Drivers Union* v. *Meadowmoor Co.* 312 U. S. 287, 301–302.

prevailing opinion nevertheless exalts the power of private nongovernmental groups to determine what use shall be made of governmental property over the power of the elected governmental officials of the States and the Nation.

The prevailing opinion seems to find some comfort in its very questionable assumption that in this case "no claim can be made that use of the library by others was disturbed by the demonstration. Perhaps the time and method were carefully chosen with this in mind." If this was the reason Saturday morning was selected, the only representative of CORE who testified was not aware of it.[7] No one of the petitioners has suggested such a thing. The lawyers for the petitioners have not. In fact at the trial responses of the sheriff to questions asked him by petitioners' lawyer indicate that there was another patron in the library at the time the petitioners "sat-in" or "stood-up" there. But even if there were no other patrons there in this instance, with this new constitutional doctrine rather shakily established, it is pretty clear that organized protesters will not overlook the chance to go into the libraries and disturb those in there to learn at any time when their "demonstration" activities will obtain the most publicity.

The prevailing opinion laments the fact that the place where these events took place was "a public library—a place dedicated to quiet, to knowledge, and to beauty." I too lament this fact, and for this reason I am deeply troubled with the fear that powerful private groups

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[7] Miss Feingold, task force worker for CORE and the State's first witness, testified on direct examination as follows:

"Q. Was there any particular reason for these defendants going to the Library on a Saturday morning?

"A. You mean on a Saturday as opposed to any other day?

"Q. Yes?

"A. No, I don't."

throughout the Nation will read the Court's action, as I do—that is, as granting them a license to invade the tranquillity and beauty of our libraries whenever they have quarrel with some state policy which may or may not exist. It is an unhappy circumstance in my judgment that the group, which more than any other has needed a government of equal laws and equal justice, is now encouraged to believe that the best way for it to advance its cause, which is a worthy one, is by taking the law into its own hands from place to place and from time to time. Governments like ours were formed to substitute the rule of law for the rule of force. Illustrations may be given where crowds have gathered together peaceably by reason of extraordinarily good discipline reinforced by vigilant officers. "Demonstrations" have taken place without any manifestations of force at the time. But I say once more that the crowd moved by noble ideals today can become the mob ruled by hate and passion and greed and violence tomorrow. If we ever doubted that, we know it now. The peaceful songs of love can become as stirring and provocative as the Marseillaise did in the days when a noble revolution gave way to rule by successive mobs until chaos set in. The holding in this case today makes it more necessary than ever that we stop and look more closely at where we are going.

I would affirm.